1994

# Hight v. Hight : Brief of Appellee

Utah Court of Appeals


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**IN THE UTAH COURT OF APPEALS**

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| DAVID HIGHT | : | |
| Plaintiff/Appellee, vs. | : | Case No. 940721-CA |
| GLORIA J. HIGHT | : | Priority 15 |
| Defendant/Appellant. | : | |

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# BRIEF OF APPELLEE

* * * *

Appeal from the Seventh Judicial District Court
in and for Carbon County, State of Utah
Honorable Bryce K. Bryner, presiding

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A. Original Findings of Fact, Conclusions of Law, Decree of Divorce and Amended Decree of Divorce from the divorce action.

B. Findings of Fact, Conclusions of Law and Order on Petition for Modification from Modification Hearing.

C. Affidavit of David Hight

D. Section 78-45-1 et. seq, Utah Code Anno., The Uniform Civil Liability for Support Act.

E. Memorandum Decision McGinty v. McGinty, (Utah Appellate March 9, 1995, Case No. 930569-CA).

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## JURISDICTION

The Utah Court of Appeals has jurisdiction over this matter pursuant to Utah Code Annotated, Section 78-2(a)-3(2)(h) as this is an appeal from a final judgment and order in a domestic relations action.

## STATEMENT OF ISSUES

1. Appellant contends that the Trial Court has misunderstood or misapplied the law in determining that there had been a substantial and material change in circumstances concerning child support. In reality, Appellant is attacking the Court's Findings of Fact. As such, the Appellant has applied the wrong standard of review and has failed to marshal all of the evidence and, despite such evidence, demonstrate that the Findings of Fact were clearly erroneous. Therefore the Appellate Court should affirm the Trial Court's child support award.

2. The Trial Court did not error in determining that there had been a substantial and material change in circumstances with respect to Appellant's ability to provide support for her minor children.

3. After determining that a substantial and material change in circumstances had occurred with respect to the child support award, the Trial Court did not error in applying the presumptive child support guidelines in Section 78-45-1, et. seq. U.C.A.

4. After setting a presumptive amount of child support pursuant to the statute, the Trial Court did not error in requiring that Appellant rebut the presumption.

5. After receiving Appellant's evidence in rebuttal to the child support guidelines, the Court evaluated each of the factors contained in Section 78-45-7(3), U.C.A., and granted some reduction in the child support to accommodate Appellant's expenses.

6. The Modification Court's review of child support was not bound to the language utilized by the Divorce Court's child support award but rather, the Modification Court was free to conduct an entire review of child support once it had determined that there had been a substantial and material change of circumstances with respect to said child support award since the entry of the Decree of Divorce.

**STANDARD OF REVIEW**

As more fully discussed in Point I of the Argument, the sound discretion of the Trial Court in establishing a child support award will not be overturned unless the Trial Court's Findings are clearly erroneous or are a clear abuse of discretion. Rule 52(a), Utah Rules of Civil Procedure; also see authorities cited in Point I of this brief.

Conclusions of Law are reviewed for correctness and are given no special deference on appeal. Also see authorities cited in Point I of this brief.

**RECORD ON APPEAL**

References to the Trial Transcript will be made as follows: (TT ___). Such reference will be utilized because the District Court Clerk did not paginate the Trial Transcript. References to the Findings of Fact entered by the Trial Court at the time of the divorce will be made as follows: (DFF ____). References to the Trial Court's Findings of Fact during the Petition for Modification proceeding will be made as follows: (MFF ___). Addenda in the brief will be referred to as follows: (ADD ___).

**STATUTORY PROVISIONS AND DETERMINATIVE CASELAW**

Section 30-3-5(3) Utah Code Ann.:

Section 30-3-5(3) Utah Code Annotated provides for continuing jurisdiction in the Trial Court to make subsequent changes or new orders after the entry of the Decree of Divorce.

Section 78-45-1 et. seq., U.C.A., The Uniform Civil Liability for Support Act, Specifically:

Section 78-45-7(3), which designates factors to be utilized in the event that the Court determines that there is sufficient evidence to rebut the presumptive child support established by the statute.

Section 78-45-7.2, U.C.A. which sets presumptive child support guidelines and makes same applicable to all orders establishing or modifying child support after July 1, 1989.

Caselaw:

Baker v. Baker, 866 P.2d 540 (Utah App. 1993), interprets the presumptive child support guidelines and explains the methodology for applying same.

**STATEMENT OF CASE**

This is an appeal from an order modifying a Decree of Divorce previously entered by the Seventh Judicial District Court in and for Carbon County, State of Utah. The Findings of Fact, Conclusions of Law and Decree of Divorce in the original divorce proceeding were entered on January 18, 1991. An Amended Decree of Divorce Nunc Pro Tunc was subsequently entered on February 4, 1992. The Amended Decree is not of significance in this action. (All documents from original action are included as ADD A).

Plaintiff/Appellee filed the current Petition for Modification on February 10, 1994 alleging a substantial and material change in circumstance concerning the issues relevant to a child support modification (ROA 146). The Petition for Modification was tried before the Honorable Bryce K. Bryner on August 26, 1994. After receiving sworn testimony and exhibits on behalf of each of the parties

and entering some Findings of Fact and Rulings in Open Court, the Court took the matter under advisement and entered its Memorandum Decision on August 29, 1994. Findings of Fact, Conclusions of Law and the Order Modifying the Decree of Divorce were signed and entered on November 4, 1994 (ADD B). Defendant/Appellant filed Notice of Appeal on November 23, 1994 (ROA 211).

**STATEMENT OF FACTS**

Appellee offers the following statement of relevant facts in the present case:

1. The Plaintiff/Appellee (hereinafter referred to as "David") and the Defendant/Appellant (hereinafter referred to as "Gloria") were divorced by Decree entered by the above-entitled Court on January 18, 1991.

2. The Decree of Divorce and Amended Decree awarded David the sole legal care and custody of his three (3) minor children, namely, Amanda Ashley Hight, born October 25, 1985; Adam Parker Hight, born June 5, 1987 and Shawn David Hight, also born June 5, 1987.

3. The Decree of Divorce did not require Gloria to pay child support to David for various reasons which were outlined in specific Findings of Fact entered by the Divorce Court. All of the applicable Findings of Fact are as follows:

Findings of Fact from divorce:

DFF5 The Court finds that the Defendant earned a gross income of $8,963.00 to the first part of October, 1990 from her part-time employment with the United States Postal Department and, therefore, the Court finds that her average gross income is the sum of $990.00 per month for the year 1990.

DFF6 The Court finds that the Plaintiff is currently employed at Sears as a repairman and earns approximately $2,400.00 per month from said employment.

DFF9 The Court will not require the Defendant to pay child support to the Plaintiff to assist with the support of the children **at this time** because the Defendant will need all of her available income to take care of her living expenses as well as meet payments on the large debt obligations which she owes for her medical treatment and expenses. [Emphasis added].

DFF10 Based on the Plaintiff's present income and his obligation to solely support his children because of the Defendant's **current** limited earning capacity and debt level and because of the Court's order requiring the Plaintiff to contribute to the payment of medical debts for the benefit of the Defendant, the Court will not order the Plaintiff to pay the Defendant any alimony. [Emphasis added].

DFF11 The Plaintiff is further ordered to pay one-half of all of the outstanding medical bills incurred by the Defendant as shown on her Financial Declaration. The Defendant is also ordered to pay one-half of all of the outstanding medical bills incurred by her as designated in her Financial Declaration. [Irrelevant portions of FF11 have been deleted]. [Medical bills outlined on Defendant's Financial Declaration totaled $17,805.90; See ADD F).

DFF12 Each of the parties is ordered to maintain medical, dental and optical insurance on the children if it is available through a group policy at their place of employment and each is ordered to pay one-half of all reasonable and necessary major medical, dental and/or optical expense incurred for and on behalf of the children which is not covered by a policy of insurance. The Plaintiff's insurance shall be designated as the primary carrier.

4. At the beginning of 1994, David became aware that Gloria had returned to her employment at the United States Postal Service on a full time basis over a year earlier (TT 9-10). He filed the current Petition for Modification on February 10, 1994 (ROA 146).

5. Gloria earned in excess of $41,000.00 pursuant to her 1993 W-2 (TT 17-18; Trial Ex. 2). She continued to earn at that rate of pay throughout all of 1994 until approximately four weeks prior to the hearing date in August of 1994 (TT 17-18).

6. Approximately four weeks before the hearing date, Gloria voluntarily accepted a new position at the Postal Service which reduced her income to $2,838.00 per month or $34,056.00 per year. The Court used this reduced income in determining Gloria's proportional share of the child support even though it had not been her historic earnings (MFF 3).

7. Even though Gloria had regained her full time employment, she failed to make any voluntary child

support or required medical payments to David from the date of the entry of the Decree of Divorce until the time of the Petition for Modification (TT 8; ADD C).

8. After receiving testimony, the Court entered a Finding from the bench. The Court found that there had been a 300% increase in Gloria's earning capacity since the time of the entry of the Decree of Divorce and that she had discharged all of the debts assigned to her in the Decree of Divorce by way of bankruptcy. The Court found that the Decree of Divorce was based upon an earning capacity of $990.00 for Gloria but that she now had a sum of at least $2,838.00 per month available to her. The Court found that such a change constituted a material and substantial change in circumstances with respect to the issue of child support (TT 56; MFF 3 & 5; MCL 1).

9. Gloria argued that the Court could not modify the child support because she alleged that her expenses had increased in direct proportion to her income. The Court declined to accept that line of reasoning (TT 45-56).

10. After determining that there had been a substantial and material change in circumstances with respect to the issues involving child support, the Court reopened the issue of child support and allowed Gloria to

present any evidence that she desired to offer to show why the presumptive child support guidelines should not be applied (TT 52-53, 55-57).

11. The Court issued its Memorandum Decision and subsequently its Findings of Fact, Conclusions of Law and Order on Petition for Modification on November 4, 1994 (ADD B).

12. The Court found that based on the present income of the parties, the Uniform Child Support Guidelines provided for child support to be paid from Gloria to David in the sum of $689.00 per month; however, the Court then stated "the only question remaining to the Court is whether good cause exists to deviate, at Defendant's request, from the guideline amount" (MFF 7; ADD B).

13. The Court then commenced a detailed analysis of Gloria's income and monthly expenses. The Court examined her expenses to determine which of those expenses might be extraordinary. After completing the detailed analysis, the Court found grounds to rebut the presumed child support and, therefore, reduced same to the sum of $525.00 per month (MFF 8 and 9; ADD B).

14. The Court declined to make the child support retroactive back to the filing of the Petition even though the Petition had been filed for over one (1) year. The Court reasoned that the Defendant would not be able

to pay the retroactive child support since she had no savings (MFF 10; ADD B).

15. In establishing child support at the sum of $525.00 per month, the Court reviewed each of the factors contained in Section 78-45-7(3), U.C.A. and provided a detailed evaluation of same (MFF 11; ADD B).

16. David was awarded one-half of his Court costs and attorney's fees for the Modification Hearing (MFF 15; MCL 4; ADD B).

17. Gloria's Notice of Appeal was timely filed (ROA 211).

18. Gloria has not paid any child support, attorney's fees, medical payments or child care costs since the time of the entry of the Decree of Divorce (ADD C).

19. After the entry of the Court's Order on Petition for Modification, Gloria threatened David with the current appeal unless he would take less than the Court ordered child support (ADD C).

20. Even though Gloria's appeal does not raise any issues concerning the child care costs or the attorney's fee award, Gloria has failed to pay any of those sums either (ADD C).

21. David and the minor children are suffering substantial economic hardship as a result of the current appeal (ADD C).

## SUMMARY OF ARGUMENT

David contends that Gloria has failed to apply the appropriate standard of review in this case. An analysis of Gloria's arguments demonstrates that she is attacking the Trial Court's Finding of Fact with respect to its determination that there had been a substantial and material change of circumstance concerning the child support issue since the time of entry of the Decree of Divorce. Gloria is required to marshal all of the evidence in support of the Findings and demonstrate, despite the evidence, that the Trial Court's Findings were clearly erroneous. Gloria has failed in that responsibility; therefore, this Court should refuse to consider her attack upon the Trial Court's child support award.

In Arguendo, Gloria contends that the language used by the original Divorce Court in determining child support created a standard for review that must be used by a future Court in making any modifications of the original child support award. Gloria presents no statutory authority and no caselaw for her position. Additionally, she ignores the current child support statute and offers caselaw which was decided years before the adoption of the Utah Uniform Child Support Guidelines as currently expressed in Section 78-45-1 et. seq., Utah Code Annotated. Additionally, her argument requires a

distorted and inaccurate interpretation of the language contained in the original Findings of Fact, Conclusions of Law and Decree of Divorce. Since Gloria has failed to offer any viable legal argument to attack the Trial Court's Findings of Fact or its determination or application of the law, the Trial Court's child support award should be affirmed.

David contends that Gloria has filed the current appeal for the sole purpose of thwarting David's attempts to gain contribution from Gloria for the support of the children. As evidence of what David believes to be the real purpose of the appeal, he points to the total lack of meritorious arguments offered by Gloria in her brief and further points to her consistent non-performance of all orders of the Court, most of which are not under appeal. David requests that this Court find that the current appeal is without merit and was either frivolous or intended to delay the collection of child support. He further requests that this Court establish a time for hearing pursuant to Rule 33 of the Utah Rules of Appellate Procedure or, alternatively, that the matter be remanded to the Trial Court for determination of Appellee's reasonable attorney's fees and Court costs on appeal.

## ARGUMENT

### I

**SINCE THE APPELLANT FAILED TO MARSHAL ALL OF THE EVIDENCE WHICH SUPPORTED THE FINDINGS OF THE TRIAL COURT AND, DESPITE SUCH EVIDENCE, DEMONSTRATE THAT THE FINDINGS WERE CLEARLY ERRONEOUS, THE APPELLATE COURT SHOULD REFUSE TO CONSIDER AN ATTACK ON THE TRIAL COURT'S CHILD SUPPORT AWARD.**

A review of Appellant's argument indicates that the Appellant is really attacking the Trial Court's Findings of Fact and not just its Conclusions of Law. The Trial Court entered numerous and express Findings of Fact in the case at bar. Those Findings should be reviewed in light of the guidelines found in Rule 52(a), Utah Rules of Civil Procedure. Rule 52(a) provides, in relevant part, as follows:

> Rule 52: Findings by the Court.
>
> (a) Effect. In all actions tried upon the facts without a jury..., the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58A;...Findings of Fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court...
>
> [Emphasis added by Order of the Utah Supreme Court on October

> 30, 1986 and became effective on January 1, 1987.]

An analysis of the 1987 modification of Rule 52(a) demonstrates a clear intent to avoid retrying the facts of the case at the Appellate level. Since a divorce action is an equitable case, the Trial Courts have been given broad discretion in making awards. Riche v. Riche, 784 P.2d 465 (Utah App. 1989); Sukin v. Sukin, 842 P.2d 922 (Utah App. 1992); Maughan v. Maughan, 770 P.2d 156 (Utah App. 1989); Myers v. Myers, 768 P.2d 979 (Utah App. 1989); Shioji v. Shioji, 712 P.2d 197 (Utah 1985). Appellate Courts have traditionally granted great deference to the Trial Court's Findings of Fact and do not overturn them unless they are clearly erroneous. In reviewing an award of child support, the Appellate Courts accord substantial deference to the Trial Court's Findings and give the Trial Court considerable latitude in fashioning the appropriate relief. Watson v. Watson, 837 P.2d 1 (Utah App. 1992); Woodward v. Woodward, 709 P.2d 393 (Utah 1985). Additionally, Appellate Courts have traditionally deferred to the Trial Court for purposes of judging the credibility of witnesses. Rule 52(a), Utah Rules of Civil Procedure; Myers, supra; Shioji, supra; Riche, supra.

In Riche v. Riche, supra, this Court stated:

> Husband, in his brief on appeal, refers this court to evidence which conflicts

> with the trial court's findings and supports his contention that he should have been awarded custody of the four children. However, Husband does not "marshal the evidence in support of the findings and then demonstrate that despite this evidence, the trial court's findings are so lacking in support as to be `against the clear weight of the evidence,' thus making them `clearly erroneous.'" Bartell, 776 P.2d at 886 (quoting Walker, 743 P.2d at 193). See also Scharf v. BMG Corp., 700 P.2d 1068, 1070 (Utah 1985); Harker v. Condominiums Forest Glen, Inc., 740 P.2d 1361, 1362 (Utah Ct. App. 1987). Therefore, we decline to further consider Husband's attack on the court's findings as to custody. (Riche, supra p. 468). [Emphasis added].

In Shioji, the Supreme Court has also expressly provided:

> On appeal from a judgment of the Trial Court, our [Appellate Court] role is not to substitute our own findings for those of the Trial Court, but to examine the record for evidence supporting the judgment.
>
> (Shioji, supra, at 201) [Emphasis added]

Given that express statement of the role of the Appellate Court, the Appellant is charged with the responsibility of (1) marshaling all the evidence in support of the Findings, and (2) demonstrating that, despite that evidence, the Trial Court's Findings are so lacking in support as to be against the clear weight of the evidence.

In the case at bar, Gloria contends that the Trial Court erred in its Conclusions of Law because it

"misunderstood or misapplied the Law". (See, Appellant's brief p. 1). However, a review of the actual argument (more fully discussed in Point II of this brief) reveals that Gloria is actually attacking the Findings of Fact of the Trial Court and, therefore, she has not applied the proper Standard of Review. She has not marshaled all of the evidence which was presented to the Trial Court nor made any attempt to evaluate the Court's reasoning nor has she demonstrated that the reasoning or the Findings based thereon were clearly erroneous. Instead, Gloria misstates the position of the original Trial Court (the Divorce Court) and then argues that the Modification Court is, somehow, permanently bound by the child support language contained in the Decree of Divorce as long as Gloria's expenditures exceed her income. Gloria presented absolutely no statutory authority for her position and the caselaw she presents is outdated and superseded by the new child support statute as will be more fully discussed hereafter.

Since the Appellant has failed to marshal all of the evidence and, despite such evidence, demonstrate that the Court's Findings concerning child support were clearly erroneous, this Court should refuse to consider any further attack on the Trial Court's child support award. Hagan v. Hagan, 810 P.2d 478 (Utah App. 1991).

Conclusions of Law are reviewed for correctness and are given no special deference on appeal. Howell v. Howell, 806 P.2d 1209 (Utah App. 1991); Smith v. Smith, 793 P.2d 407 (Utah App. 1990).

**II**

**SINCE APPELLANT HAS FAILED TO PRESENT ANY VIABLE LEGAL ARGUMENT TO ATTACK THE TRIAL COURT'S FINDINGS OF FACT OR ITS DETERMINATION OR APPLICATION OF THE RELEVANT LAW, THE TRIAL COURT'S CHILD SUPPORT AWARD SHOULD BE AFFIRMED.**

Appellant's position is best summarized by the last sentence contained in her two page Argument:

> "it was not proper for the Court to find that a substantial change in circumstances existed sufficient to modify Mrs. Hight's child support obligations without determining that Mrs. Hight's present living expenses and costs for medical treatment and expenses had not also increased so as to still require all of Mrs. Hight's present income."

The logical extension of the Appellant's position is that as long as Gloria increases her expenditures faster than she increases her income, she should never be required to pay any child support. In short, if she earned a million dollars and spent a million and one, her children would not be entitled to any contribution from their mother. The position is indefensible for three reasons: (1) Appellant's argument relies upon an inaccurate and distorted interpretation of the child support provision contained in Findings of Fact originally issued in the divorce action; (2) Appellant's argument ignores the

procedures utilized and the Findings of Fact adopted by the Trial Court during the Petition for Modification process; and (3) Appellant's argument ignores the express language of the current child support statute and relies upon caselaw that is no longer applicable as a result of said statute.

First, Appellant's argument relies upon an inaccurate and distorted interpretation of the child support provision contained in the Findings of Fact originally issued in the divorce action. Gloria quotes selected language from Paragraph 9 of the Divorce Court's Findings of Fact; however, a review of all of the Findings of Fact and all of the language contained therein demonstrates that the Court intended the child support award to be based only on the facts that existed at the time of the entry of the Decree of Divorce (ADD A). At the time of the entry of the Decree of Divorce, Gloria was on a part-time work schedule and received an income of $990.00 per month from her employment (DFF 5; ADD A). David was working as a Sears repairman and earned $2,400.00 per month from his employment (DFF 6; ADD A). David was awarded the sole care and custody of the parties' three young children (DFF 7; ADD A). Gloria was not awarded any alimony because David's limited earning capacity did not allow for the payment of same while he was trying to support the children and also contribute to

the payment of Gloria's medical debts (DFF 10; ADD A). The Court ordered each of the parties to pay one-half of the $17,805.90 in medical bills incurred by Gloria after the separation of the parties but immediately prior to the trial in the divorce matter (DFF 11; ADD A; ADD F). With that information in mind, the Divorce Court entered Finding of Fact 9:

> The Court will not require Defendant (Gloria) to pay child support to the Plaintiff (David) to assist with the support of the children **at this time** because the Defendant will need all of her available income to take care of her living expenses as well as meet payments on the large debt obligations which she owes for her medical treatment and expenses.

Gloria now contends that the language of the Divorce Court's Finding of Fact and the subsequent order stating that she was not required to pay any child support established a permanent standard for all subsequent child support reviews. It is her position that the Modification Court could not alter the child support provision in the Decree of Divorce unless it could first establish that she did not need all of her available income to take care of her current living expenses and medical needs. Appellant never established any statutory or common law basis for her argument. A careful review of Finding of Fact 9 entered at the time of the divorce indicates that the Divorce Court contemplated a change of the child

support award when Gloria regained her employment. Finding of Fact 9 clearly specifies "at this time" the Court would not award child support. All of the parties agree that the Trial Court maintains continuing jurisdiction to review child support awards when a substantial and material change of circumstances has occurred with respect to the issue to be modified. Haslam v. Haslam, 657 P.2d 757 (Utah 1982); Appellant's brief at p. 7.

In the case at bar, the Modification Court heard considerable testimony about the dramatic increase in Gloria's earning capacity since the time of the entry of the Decree of Divorce. Additionally, it received evidence that she had bankrupted against all of the medical debts that she had at the time of the entry of the Decree of Divorce. Additionally, the two separate changes in the child support guidelines themselves since the time of the entry of the Decree of Divorce would constitute grounds for a modification of the child support award if it would result in an increase of child support by more than twenty-five (25%) percent which was the situation in the case at bar (Section 78-45-7(3) U.C.A; ADD D).

The Modification Court was not impressed with Appellant's argument at the time of the hearing and so advised her counsel (TT 49-57). The Modification Court refused to be drawn into Appellant's distorted

interpretation of the Divorce Court's original Findings of Fact and, instead, found that a 300% increase in Gloria's earning capacity since the time of the entry of the Decree of Divorce, coupled with the discharge of all of her debts from the time of the Decree of Divorce, constituted a substantial and material change in circumstances sufficient to reopen the issue of child support (MFF 3, 4, & 5; MCL 1; TT 56; ADD B).

Since Appellant has failed to marshal any of the evidence which supported the Trial Court's Findings of Fact and since Appellant has failed to provide any legal basis for her theory that a subsequent Court is bound by the Divorce Court's child support language, this Court should refuse to consider an attack on the Trial Court's child support award.

Second, Appellant's argument ignores the procedures utilized and the Findings of Fact adopted by the Trial Court during the Petition for Modification process. Gloria contends that the Modification Court could not modify the child support award in the Decree as long as her present living expenses and costs for medical treatment had increased proportionally with her increased income. Her brief failed to advise this Court of the extensive procedural discussion which ensued during the hearing on the Petition for Modification. The Modification Court reviewed the bifurcation process, drew

analogies to the procedures used in custody modification hearings and ultimately adopted a procedure that required the Petitioner to establish that a substantial and material change in circumstances had occurred with respect to the issues which were determinative of the original child support order i.e. the relative earning capacities of the parties and their respective debt levels (TT 49-57). After receiving substantial testimony, the Court entered a ruling from the bench. The Court found that a 300% increase in Gloria's earning capacity, which increased her income from $990.00 per month to $2,838.00 per month, constituted a material and substantial change directly affecting her ability to pay child support (TT 56). Having made that determination, the Court then advised that the issue of child support would be reopened and explored anew (TT 52). The Modification Court then applied the Utah Uniform Child Support Guidelines and received extensive testimony offered by Gloria in an attempt to rebut the presumption in favor of the guidelines. The Court then entered specific Findings of Fact which fully explored the earning capacities of each of the parties, their respective standards of living and costs and expenses related thereto, their medical conditions, the needs of the children, the age of the parties, and their respective support obligations. Additionally, the Court

fully explored Gloria's representations concerning her medical expenditures (MFF 5, 6, 7, 8, 9, 11, 15). Finally, the Court entered specific Findings to justify a deviation from the child support guidelines in order to provide Gloria with some additional funds to offset her medical expenses (MFF 8C & 9). Appellant has failed to marshal any of the evidence that supported the detailed Findings of Fact and ultimate orders that issued therefrom. She also failed to offer any legal authority attacking the Court's methodology. As such, the Appellant failed to meet her standard of review and, therefore, this Court should refuse to consider any further attack on the Trial Court's child support award.

Third, Appellant's argument ignores the express language of the current child support statute and relies upon irrelevant caselaw that was decided under an earlier statute. Section 78-45-1, et. seq. U.C.A., the Uniform Civil Liability for Support Act, established an entirely new approach to the determination of child support awards. Specifically, Section 78-45-7.2, provides in relevant part, as follows:

> **Application of guidelines - Rebuttal.**
> (1) The guidelines apply to any judicial or administrative order establishing or <u>modifying an award of child support</u> entered on or after July 1, 1989.
>
> (2) (a) The child support guidelines shall be applied as a

rebuttable presumption in establishing or modifying the amount of temporary or permanent child support.

(b) The rebuttable presumption means the provisions and considerations required by the guidelines, the award amounts resulting from the application of the guidelines, and the use of the worksheets consistent with these guidelines are presumed to be correct, unless rebutted under the provisions of this section.

(6) With regard to child support orders, enactment of the guidelines and any subsequent change in the guidelines constitutes a substantial or material change of circumstances as a ground for modification or adjustment of a court order, if there is a difference of at least 25% between the existing order and the guidelines. (As amended 1994). [Emphasis added].

The statute clearly requires the application of the Utah Uniform Child Support Guidelines to any modification of a child support award entered on or after July 1, 1989. In the case at bar, the Modification Court adopted the express procedure contained in the new statute. After finding a substantial change of circumstances, the Court adopted the presumptive guidelines (TT 51-52). It then required that Gloria rebut the presumption to establish a justification for an award of child support at less than the amount specified in the guidelines.

Gloria, however, directs this Court to caselaw decided prior to the adoption of the presumptive child support guidelines. She first cites Haslam v. Haslam, 657 P.2d 757 (Utah 1982). Contrary to her argument, the Haslam decision stands for the proposition that "provisions in the original Decree of Divorce granting alimony, child support and the like must be readily susceptible to alteration at a later date, as the needs which such provisions were designed to fill are subject to rapid and unpredictable change." Haslam, supra, at p. 758 citing Foulger v. Foulger, 626 P.2d 412 (Utah 1981). Nowhere does the Haslam decision attempt to tie the hands of the Modification Court and require it to adhere to some distorted interpretation of the language used by the Trial Court in determining the original child support award. Gloria then urges this Court to review the factors applied to child support in Ostler v. Ostler, 789 P.2d 713 (Utah App. 1990). Although Ostler was decided in 1990, the trial on the Petition for Modification actually occurred in 1987. At that time, child support was controlled by a statute that required application of a number of specific factors before establishing the support award. As indicated by the Ostler Court at the time of the Appellate decision, that statute had been superseded by the 1989 statute (Section 78-45-7.14) and said statute has again been superseded by the current

statute (Section 78-45-7.2). The Ostler Court remanded the matter to the Trial Court to make a determination on each of the factors listed in the prior statute. In the case at bar, the Court was not required to utilize those factors as the current statute eliminated the factors and set a presumptive level of child support.

Appellant has failed to provide any basis for her attack upon the award of child support set by the Trial Court. She has ignored the child support statute in its entirety. She has cited caselaw which does not support her contention and which was decided long before the adoption of the presumptive child support guidelines. She has failed to marshal all of the evidence that supported the Trial Court's Findings and then, despite such evidence, demonstrate that the Trial Court's Findings were clearly erroneous. Finally, she has omitted the only relevant case that has been decided since the adoption of the guidelines, namely, Baker v. Baker, 866 P.2d 540 (Utah App. 1993).

In Baker, the Court discussed the procedure for the application of the various sections of the child support statute. The case supports the procedure and methodology used by the Trial Court in the case at bar. It instructs the Trial Court to apply the presumptive child support guidelines and then, only where there is sufficient evidence to rebut the guidelines, should the Court

consider the factors outlined in Section 78-45-7(3) of the statute. A review of the Modification Court's Findings of Fact demonstrates that the Court addressed each factor contained in Section 78-45-7(3) (MFF 11 A-G).

In reviewing an award of child support, the Appellate Courts accord substantial deference to the Trial Court's Findings and give it considerable latitude in fashioning an appropriate relief. Baker, supra at p. 29; Watson v. Watson, 837 P.2d 1 (Utah App. 1992); Woodward, supra at p. 394. Additionally, the Appellate Courts do not disturb the Trial Court's actions "unless the evidence clearly preponderates to the contrary or there has been an abuse of discretion." Baker, supra at p. 29; Woodward, supra at p. 394. In the case at bar, the Trial Court received evidence that there had been a substantial and material change of circumstance with respect to Gloria's ability to contribute to the support of her children. The Court then adopted the presumptive child support guidelines in express conformity with the child support statute. It received additional testimony about Gloria's ongoing expenses and entered specific Findings of Fact on each and every factor in Section 78-45-7(3) U.C.A. Finally, the Court entered a child support award that was less than the amount specified in the guidelines in order to provide Gloria with some assistance in meeting her ongoing expenses. Since

Appellant has failed to demonstrate that any of the Findings of Fact or the methodology utilized by the Court were in error, this Court should affirm the child support award.

## III

**APPELLEE SHOULD BE AWARDED HIS COSTS AND ATTORNEY'S FEE ON APPEAL.**

Rule 33, Utah Rules of Appellate Procedure, provides, in relevant part, as follows:

> (a) **Damages for delay or frivolous appeal.** Except in a first appeal of right in a criminal case, if the court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include single or double costs, as in Rule 34, and/or reasonable attorney fees, to the prevailing party. The court may order that the damages be paid by the party or by the party's attorney.
>
> (b) **Definitions.** For the purposes of these rules, a frivolous appeal, motion, brief or other paper is one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify or reverse existing law. An appeal, motion, brief, or other paper interposed for the purpose of delay is one interposed for any improper purpose such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit only the party filing the appeal, motion, brief, or other paper.

David requests that he be awarded his Court costs and attorney's fees on this appeal on the grounds that the appeal is frivolous and without merit and was

intended solely to delay payment of the child support award. This Court has made it clear that it has the authority to award costs and attorney's fees under appropriate circumstances. McGinty v. McGinty, Memo Dec., March 9, 1995 (Utah App. Case No. 930569-CA) (ADD E); Riche v. Riche, 784 P.2d 465 (Utah App. 1989); Eames v. Eames, 735 P.2d 395 (Utah 1987). The recent substantial revisions of Rule 33 define a frivolous appeal as one that is not grounded in fact or warranted by existing law or which is interposed for purposes of delay. In Eames, supra, the Supreme Court stated that a husband's appeal from a judgment relating to the distribution of marital property was frivolous where there was no basis for the argument presented and the evidence and law were mis-characterized and misstated.

It should be noted that the Modification Court awarded David one-half of his Court costs and attorney's fees incurred at the Modification Hearing. The Court provided an extensive analysis of its justification for that award (MFF 15; ADD B).

Applying the standard for an award of attorney's fees as outlined above to the case at bar lends strong support for an award to David. David contends that Gloria filed the current appeal for the sole purpose of delaying payment to him. Since the time of the entry of the Court's ruling in this case, Gloria has failed to pay any

child support whatsoever. She has failed to pay any of the Court costs or attorney's fees awarded in by the Trial Court even though that issue was not appealed (ADD C). As indicated by David's Affidavit (ADD C), he has received no voluntary support whatsoever from Gloria for the benefit of the minor children since the time of the entry of the Decree of Divorce on January 18, 1991. The Office of Recovery Services received $310.00 by garnishment of taxes but has been unwilling to pursue the child support obligation because of the pending appeal (ADD C). Additionally, Gloria has attempted to use the appeal to force a settlement of the child support at amounts less than awarded by the Trial Court (ADD C).

As in McGinty and Eames, David contends that he should be granted his costs and attorney's fees because an analysis of Gloria's argument demonstrates that it was frivolous in nature. Appellant has failed to provide this Court with any rational basis for overturning the Trial Court's decision. She has not attempted to marshal all the evidence in support of the Trial Court's Findings and then argue that, despite such evidence, the Trial Court's Findings were clearly erroneous or an abuse of discretion. She has failed to provide this Court with any legal theory that would give it grounds for overturning the Trial Court nor has she provided any caselaw that would support her position in this case. She has ignored

the applicable child support statute and the current caselaw that is determinative of this matter. Such "lack of meritorious issues" supports David's contention that the sole purpose for this appeal was to delay the imposition and collection of child support as directed by the Trial Court in this matter.

From the totality of the circumstances surrounding the appeal, it genuinely appears that the appeal exists for the sole purpose of thwarting David's attempts to gain contribution from Gloria for the support of the children. The current appeal raises no issue with respect to the payment of attorney's fees at the Trial Court level; however, they remain unpaid (ADD C). The current appeal raises no issue with respect to the payment of child care costs; however, they remain unpaid (ADD C). The current appeal raises no issue with respect to medical expenses incurred for the children; however, they remain unpaid (ADD C). Such a course of performance, coupled with the lack of any meritorious arguments, strongly suggests that the appeal exists solely to stall collection of child support.

David requests that this Court find that the current appeal is without merit and was either frivolous or intended to cause delay. He requests that the Court award him costs and attorney's fees and establish a time for hearing pursuant to Rule 33 or, alternatively, remand to

the Trial Court for a determination of reasonable attorney's fees and Court costs on appeal.

**CONCLUSION**

Gloria has failed to apply the appropriate standard of review in the case at bar. She has failed to marshal all of the evidence in support of the Trial Court's Findings and then demonstrate, despite such evidence, that the Trial Court's Findings were clearly erroneous. She attempts to argue a position for which no statutory or common law exists. She has ignored the current child support statute and the Baker case which explains the statute. She has failed to offer any viable legal argument which would attack the Trial Court's Findings or its determination or application of the law. In fact, the complete lack of merit of her arguments coupled with the circumstances surrounding the appeal strongly suggest that the appeal was filed for the sole purpose of delaying the enforcement of child support or coercing a reduction of same. As such, this Court should affirm the Trial Court's child support award and remand this matter to the Trial Court for a determination of Appellee's Court costs and attorney's fees on this appeal.

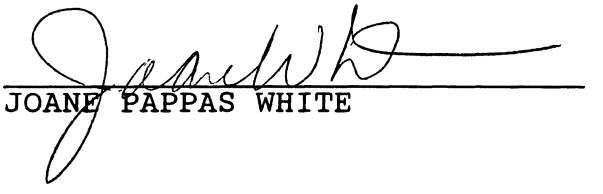
Respectfully submitted this 19th day of May, 1994.

JOANE PAPPAS WHITE
Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that I caused to be hand delivered two (2) true and correct copies of the foregoing BRIEF OF APPELLEE, by delivering same on this 19th day of May, 1995 to the following:

Harry Caston
McKay, Burton & Thurman
Suite 600 Kennecott Building
10 East South Temple Street
Salt Lake City, Utah 84133



JOANE PAPPAS WHITE

ADDENDUM A

ORIGINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, DECREE OF DIVORCE AND AMENDED DECREE OF DIVORCE FROM THE DIVORCE ACTION

ORIGINAL

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IN THE SEVENTH DISTRICT COURT IN AND FOR CARBON COUNTY, STATE OF UTAH

| | |
|---|---|
| DAVID HIGHT,<br><br>Plaintiff,<br>Vs.<br><br>GLORIA J. HIGHT,<br><br>Defendant. | **FINDINGS OF FACT AND CONCLUSIONS OF LAW**<br><br>Civil No. 15978 |

The above-entitled matter came on regularly for trial before the Court on the 15th day of October, 1990, the Honorable **BOYD BUNNELL**, District Judge presiding; and, the Plaintiff appeared personally and with his counsel, **JOANE PAPPAS WHITE**; and, the Defendant appeared personally and with her counsel **JOHN E. SCHINDLER**; and, the Court heard sworn testimony and received exhibits and announced findings from the bench and a ruling concerning the issue of custody of the minor children which ruling will now be repeated herein; and, the Court took the balance of the issues under advisement; and, each of the parties filed a Motion to Reconsider certain items contained in the Court's original Memorandum Decision and the rulings on said Motions are contained herein; and, the

Court having been fully advised in the premises now finds as follows:

FINDINGS OF FACT

1. That the parties hereto were actual and bona fide residents of Price, Carbon County, State of Utah, and had been for more than three (3) months immediately next prior to the commencement of this action.

2. That the Plaintiff and the Defendant were married on the 17th day of January, 1981 at Orem, Utah County, state of Utah and have been husband and wife since that time.

3. That there have been three (3) children born as the issue of this marriage, namely, **AMANDA ASHLEY HIGHT**, born October 25, 1985; **ADAM PARKER HIGHT**, born June 5, 1987 and **SHAWN DAVID HIGHT**, born June 5, 1987 (Twin boys).

4. The Court finds that irreconcilable differences have occurred in the marital relationship that makes it impossible for the Plaintiff to continue in said relationship and, therefore, the Court finds that the Plaintiff is entitled to a Decree of Divorce terminating his marriage to the Defendant. In reviewing the file, the Court finds that the Defendant has no Answer or Counterclaim on file herein but that the parties entered an oral stipulation at the time of the Pretrial before the Court Commissioner whereby a general denial was entered on the record in Defendant's behalf and was deemed to constitute an Answer for the Defendant.

5. The Court finds that the Defendant earned a gross sum of EIGHT THOUSAND NINE HUNDRED SIXTY-THREE ($8,963.00) DOLLARS to the first part of October, 1990 from her part-time employment with the United States Postal Department and, therefore, the Court finds that her average gross income is the sum of NINE HUNDRED NINETY ($990.00) DOLLARS per month for the year 1990.

6. The Court finds that the Plaintiff is currently employed at Sears as a repairman and earns approximately TWO THOUSAND FOUR HUNDRED ($2,400.00) DOLLARS per month from said employment.

7. With respect to the issue of custody, the Court entered the following Findings of Fact from the bench following the presentation of evidence on October 15, 1990:

A. That the Plaintiff has been the primary caretaker of the three (3) minor children of the parties during much of the time since their respective births and particularly for the last year since the Defendant was hospitalized and subsequently separated from the Plaintiff.

B. The Court finds that the Plaintiff has consistently demonstrated his willingness to place the needs of the children ahead of his own needs and provide a stable home environment for the children.

C. The Court finds that the minor children are doing well in the Plaintiff's care and finds that it would

be in their best interest to maintain the stability which they have in the Plaintiff's environment.

D. The Court finds that the Defendant has experienced ongoing emotional problems which have required numerous hospitalizations and which have required various medications. Although the Defendant appears to be demonstrating an improvement in her condition, the Court finds that the Plaintiff has never exhibited emotional problems or been required to take prescriptions which have mood altering effect.

E. The Court is mindful of the various case law establishing the criteria to evaluate and determine a custody award. From the evidence the Court finds that it is in the best interests of the minor children of the parties that their care, custody and control be awarded to the Plaintiff.

8. The Court finds that it is in the best interest of the children that they have visitation with their mother and that said visitation should be on a regular basis without being overly disruptive of their normal home environment; therefore, the Court finds that the Defendant should be entitled to reasonable visitation with the minor children, at all reasonable times and places, including but not limited to the following:

A. The Defendant shall be entitled to take the children every other weekend from 5:00 p.m. on Fridays until 7:30 p.m. on Sundays; and

B. The Defendant shall be entitled to visit with the children commencing at 9:30 a.m. and terminating at 7:30 p.m. on every other major holiday which shall be deemed to be Easter, Memorial Day, July 4, Labor Day and Thanksgiving. She shall commence her holiday visits with Thanksgiving of 1990; and

C. The Defendant shall be entitled to visit with the minor children every Christmas holiday commencing at 9:30 a.m. on December 26th and continuing until 6:00 p.m. on December 29th; and

D. The Plaintiff shall be entitled to have the children every Father's Day and the Defendant shall have the right to visit with the children every Mother's Day, irrespective of weekend visitations; and

E. The Defendant shall be entitled to take the children for two (2) weeks during the month of June and two (2) weeks during the month of August of each school summer vacation period and the Defendant shall be allowed designate the dates for said summer visitation provided that she notifies the Plaintiff of those dates by May 1st of each year.

F. The Plaintiff should keep the Defendant advised of any major medical care required for the children

as well as keeping her advised of their progress in school and other significant aspects of the children's lives.

9. The Court will not require the Defendant to pay child support to the Plaintiff to assist with the support of the children at this time because the Defendant will need all of her available income to take care of her living expenses as well as meet payments on the large debt obligations which she owes for her medical treatment and expenses.

10. Based on the Plaintiff's present income and his obligation to solely support his children because of the Defendant's current limited earning capacity and debt level and because of the Court's Order requiring the Plaintiff to contribute to the payment of medical debts for the benefit of the Defendant, the Court will not order the Plaintiff to pay the Defendant any alimony.

11. The Court further finds that the Plaintiff should be required to pay the debts listed on his financial statement, namely, the Hanover Mastercard (new account), the Hanover Mastercard (old account), the Discover card, the Sears card, the children's ABC books, and the Fleetwood mortgage debt as well as the miscellaneous medical and dental providers expenses incurred on behalf of the minor children. The Plaintiff is further ordered to pay one-half of all the outstanding medical bills incurred by the Defendant as shown on her Financial Declaration. The Defendant is also ordered

to pay one-half of all the outstanding medical bills incurred by her as designated in her Financial Declaration.

12. Each of the parties is ordered to maintain medical, dental and optical insurance on the children if it is available through a group policy at their place of employment and each is ordered to pay one-half of all reasonable and necessary major medical, dental and/or optical expense incurred for and on behalf of the children which is not covered by a policy of insurance. The Plaintiff's insurance shall be designated as the primary carrier.

13. The parties hereto have accumulated some real and personal property during this marriage and said property is awarded and distributed as follows:

A. The Court finds that the Plaintiff will need the use of the marital residence in order to provide a home for the minor children and, therefore, the Court finds that said home should be awarded to the Plaintiff provided that he assumes the outstanding indebtedness thereon and holds the Defendant harmless therefrom. The Court specifically finds that the real property has an equity of approximately SIX THOUSAND ($6,000.00) DOLLARS.

B. The Court finds that the 1980 Honda automobile and the 1974 Porsche automobile have a combined value of approximately ONE THOUSAND NINE HUNDRED ($1,900.00) DOLLARS and that those vehicles have traditionally been the Plaintiff's vehicles and that he should be awarded same.

C. The Court finds that the 1985 Ford Bronco has a value of approximately EIGHT THOUSAND FIVE HUNDRED ($8,500.00) DOLLARS and that said vehicle should be awarded to the Defendant.

D. The Court finds that the parties had accumulated savings bonds during the marriage with a value of approximately THREE THOUSAND FIVE HUNDRED ($3,500.00) DOLLARS and that the bonds have been turned over to the Defendant and should be awarded to her herein.

E. The parties have previously divided the balance of their personal property between them and the Court finds that each party should be awarded those items in his or her possession as of the date of hearing, namely, October 15, 1990 with the provision that the Plaintiff is ordered to furnish to the Defendant a working and useable washing machine.

F. The Court finds that each of the parties have accumulated retirement benefits through the course of their respective employments and the Court finds that each of the parties should be awarded his or her respective retirement programs free and clear of any and all claims of the other party.

14. The Court finds that each party has the capacity to pay his or her respective Court Costs and attorney's fees in this matter and that each party should be ordered to do so.

15. Each of the parties hereto submitted a request for the Court to reconsider part of the rulings in its Memorandum Decision, the Court has previously entered a Memorandum Decision on said Motions dated December 5, 1990 which is incorporated herein, as follows:

A. Plaintiff has moved the Court to reconsider the medical debt distribution as previously ordered by the Court based upon newly discovered evidence. It is the contention of the Plaintiff that the Defendant incurred medical bills for elective treatment that may have not been covered by his insurance and, therefore, the Plaintiff should not be required to pay all of those elective medical bills. The Defendant has objected to any change and has denied the elective nature of the surgery and treatment.

B. The Defendant has also asked the Court to reconsider the decision relative to the distribution of personal property.

C. The matters presented in these Motions could have been aired at the time of the trial and the Court finds that said Motions should be denied with the exception that the Court will order that the Defendant should be given one-half of the family photos of the children and any other photos in the possession of the Plaintiff that are requested for the purposes of having copies of same made.

D. The Court expressly finds that the personal property distribution made in the Court's original

Memorandum Decision was made so that the children could take advantage of the majority, if not all, of the personal property accumulated by the parties during the marriage.

The Court having entered the foregoing Findings of Fact now concludes as follows:

CONCLUSIONS OF LAW

1. That the Plaintiff is granted a divorce from the Defendant.

2. That the Plaintiff is awarded the care, custody and control of the three (3) minor children of the parties, namely, **AMANDA ASHLEY HIGHT**, born October 25, 1985; **ADAM PARKER HIGHT**, born June 5, 1987 and **SHAWN DAVID HIGHT**, born June 5, 1987 (Twin boys), subject to Defendant's rights to visit said children at all reasonable times and places, including but not limited to the following:

A. The Defendant is entitled to take the children every other weekend from 5:00 p.m. on Fridays until 7:30 p.m. on Sundays; and

B. The Defendant is entitled to visit with the children commencing at 9:30 a.m. and terminating at 7:30 p.m. on every other major holiday which shall be deemed to be Easter, Memorial Day, July 4, Labor Day and Thanksgiving. She shall commence her holiday visits with Thanksgiving of 1990; and

C. The Defendant is entitled to visit with the minor children every Christmas holiday commencing at 9:30

a.m. on December 26th and continuing until 6:00 p.m. on December 29th; and

D. The Plaintiff is entitled to have the children every Father's Day and the Defendant shall have the right to visit with the children every Mother's Day, irrespective of weekend visitations; and

E. The Defendant is entitled to take the children for two (2) weeks during the month of June and two (2) weeks during the month of August of each school summer vacation period and the Defendant will be allowed designate the dates for said summer visitation provided that she notifies the Plaintiff of those dates by May 1st of each year.

F. The Plaintiff shall keep the Defendant advised of any major medical care required for the children as well as keeping her advised of their progress in school and other significant aspects of the children's lives.

3. The parties hereto have accumulated certain real and personal property during this marriage and said property is awarded as follows:

A. The Plaintiff is awarded the home of the parties provided that he assumes the outstanding indebtedness thereon and holds the Defendant harmless therefrom.

B. The Plaintiff is awarded the 1980 Honda automobile and the 1974 Porsche automobile.

C. The Defendant is awarded the 1985 Ford Bronco.

D. The Defendant is awarded the savings bonds with a value of approximately THREE THOUSAND FIVE HUNDRED ($3,500.00) DOLLARS.

E. Each party is awarded those items of personal property in his or her possession as of October 15, 1990.

F. The Plaintiff is ordered to furnish the Defendant with a working and useable washing machine.

G. Each party is awarded his or her respective retirement benefits, free and clear of all claims of the other party.

4. No child support is awarded herein.

5. No alimony is awarded herein.

6. The parties hereto have accumulated certain debts and obligations during the marriage and the Defendant has accumulated certain debts and obligations for her medical treatment following the separation of the parties, said debts and obligations are allocated as follows:

A. The Plaintiff is ordered to assume and pay the outstanding debts and obligations as designated in his Financial Declaration, namely, Hanover Mastercard (new account), Hanover Mastercard (old account), the Discover Card, the Sears account, the children's ABC books, and the Fleetwood mortgage on the home together with various medical and dental bills accumulated on behalf of the minor children.

B. The Plaintiff is ordered to pay one-half of the medical expenses incurred by the Defendant as stated in her Financial Declaration.

C. The Defendant is ordered to pay one-half of the medical expenses incurred by her as stated in her Financial Declaration.

7. Each party is ordered to maintain medical, dental and optical insurance on the minor children of the parties if it is available through a group policy at their place of employment, as a benefit of their employment at little or no expense and each party is further ordered to pay one-half of any reasonable and necessary major medical, dental and/or optical expense incurred for and on behalf of the minor children which is not covered by a policy of insurance. The Plaintiff's insurance shall be designated as the primary carrier.

8. Each party is ordered to pay his or her respective Court costs and attorney's fees in this matter.

9. Each parties' Motion for Reconsideration is hereby denied.

DATED this 18 day of January, 1991.

BOYD BUNNELL
District Court Judge

APPROVED AS TO FORM ~~& CONTENT:~~

JOHN E. SCHINDLER
Attorney for Defendant

ORIGINAL

JUN 19 1991

BY _____ DEPUTY

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IN THE SEVENTH DISTRICT COURT IN AND FOR CARBON COUNTY, STATE OF UTAH

| | |
|---|---|
| DAVID HIGHT,<br><br>Plaintiff,<br>Vs.<br><br>GLORIA J. HIGHT,<br><br>Defendant. | DECREE OF DIVORCE<br><br>Civil No. 15978 |

The above-entitled matter came on regularly for trial before the Court on the 15th day of October, 1990, the Honorable BOYD BUNNELL, District Judge presiding; and, the Plaintiff appeared personally and with his counsel, JOANE PAPPAS WHITE; and, the Defendant appeared personally and with her counsel JOHN E. SCHINDLER; and, the Court heard sworn testimony and received exhibits and announced findings from the bench and a ruling concerning the issue of custody of the minor children which ruling will now be repeated herein; and, the Court took the balance of the issues under advisement; and, each of the parties filed a Motion to Reconsider certain items contained in the Court's original Memorandum Decision and the rulings on said Motions are contained herein; and, the

Court having been fully advised in the premises and having entered the foregoing Findings of Fact and Conclusions of Law now, therefore;

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1. That the Plaintiff is granted a divorce from the Defendant.

2. That the Plaintiff is awarded the care, custody and control of the three (3) minor children of the parties, namely, **AMANDA ASHLEY HIGHT**, born October 25, 1985; **ADAM PARKER HIGHT**, born June 5, 1987 and **SHAWN DAVID HIGHT**, born June 5, 1987 (Twin boys), subject to Defendant's rights to visit said children at all reasonable times and places, including but not limited to the following:

A. The Defendant is entitled to take the children every other weekend from 5:00 p.m. on Fridays until 7:30 p.m. on Sundays; and

B. The Defendant is entitled to visit with the children commencing at 9:30 a.m. and terminating at 7:30 p.m. on every other major holiday which shall be deemed to be Easter, Memorial Day, July 4, Labor Day and Thanksgiving. She shall commence her holiday visits with Thanksgiving of 1990; and

C. The Defendant is entitled to visit with the minor children every Christmas holiday commencing at 9:30

a.m. on December 26th and continuing until 6:00 p.m. on December 29th; and

D. The Plaintiff is entitled to have the children every Father's Day and the Defendant shall have the right to visit with the children every Mother's Day, irrespective of weekend visitations; and

E. The Defendant is entitled to take the children for two (2) weeks during the month of June and two (2) weeks during the month of August of each school summer vacation period and the Defendant will be allowed designate the dates for said summer visitation provided that she notifies the Plaintiff of those dates by May 1st of each year.

F. The Plaintiff is ordered to keep the Defendant advised of any major medical care required for the children as well as keeping her advised of their progress in school and other significant aspects of the children's lives.

3. The parties hereto have accumulated certain real and personal property during this marriage and said property is awarded as follows:

A. The Plaintiff is awarded the home of the parties provided that he assumes the outstanding indebtedness thereon and holds the Defendant harmless therefrom.

B. The Plaintiff is awarded the 1980 Honda automobile and the 1974 Porsche automobile.

C. The Defendant is awarded the 1985 Ford Bronco.

D. The Defendant is awarded the savings bonds with a value of approximately THREE THOUSAND FIVE HUNDRED ($3,500.00) DOLLARS.

E. Each party is awarded those items of personal property in his or her possession as of October 15, 1990.

F. The Plaintiff is ordered to furnish the Defendant with a working and useable washing machine.

G. Each party is awarded his or her respective retirement benefits, free and clear of all claims of the other party.

4. No child support is awarded herein.

5. No alimony is awarded herein.

6. The parties hereto have accumulated certain debts and obligations during the marriage and the Defendant has accumulated certain debts and obligations for her medical treatment following the separation of the parties, said debts and obligations are allocated as follows:

A. The Plaintiff is ordered to assume and pay the outstanding debts and obligations as designated in his Financial Declaration, namely, Hanover Mastercard (new account), Hanover Mastercard (old account), the Discover Card, the Sears account, the children's ABC books, and the Fleetwood mortgage on the home together with various medical and dental bills accumulated on behalf of the minor children.

B. The Plaintiff is ordered to pay one-half of the medical expenses incurred by the Defendant as stated in her Financial Declaration.

C. The Defendant is ordered to pay one-half of the medical expenses incurred by her as stated in her Financial Declaration.

7. Each party is ordered to maintain medical, dental and optical insurance on the minor children of the parties if it is available through a group policy at their place of employment, as a benefit of their employment at little or no expense and each party is further ordered to pay one-half of any reasonable and necessary major medical, dental and/or optical expense incurred for and on behalf of the minor children which is not covered by a policy of insurance. The Plaintiff's insurance shall be designated as the primary carrier.

8. Each party is ordered to pay his or her respective Court costs and attorney's fees in this matter.

9. Each parties' Motion for Reconsideration is hereby denied.

DATED this 18 day of January, 1991.

BOYD BUNNELL
District Court Judge

APPROVED AS TO FORM ~~& CONTENT~~:

John E. Schindler
JOHN E. SCHINDLER
Attorney for Defendant

JOANE PAPPAS WHITE #3445
Attorney for Plaintiff
Fifth Street Plaza, Suite 1
475 East Main Street
Price, Utah 84501
Telephone: (810) 637-0177

IN THE **SEVENTH DISTRICT** COURT IN AND FOR **CARBON** COUNTY, STATE OF UTAH

| | |
|---|---|
| **DAVID HIGHT,** Plaintiff, Vs. **GLORIA J. HIGHT,** Defendant. | **AMENDED DECREE OF DIVORCE NUNC PRO TUNC** Civil No. 15978 |

The above-entitled matter came on regularly for trial before the Court on the 15th day of October, 1990, the Honorable **BOYD BUNNELL**, District Judge presiding; and, the Plaintiff appeared personally and with his counsel, **JOANE PAPPAS WHITE**; and, the Defendant appeared personally and with her counsel **JOHN E. SCHINDLER**; and, the Court heard sworn testimony and received exhibits and announced findings from the bench and a ruling concerning the issue of custody of the minor children which ruling will now be repeated herein; and, the Court took the balance of the issues under advisement; and, each of the parties filed a Motion to Reconsider certain items contained in the Court's original Memorandum Decision and the rulings on said Motions are contained herein; and, the

Court having been fully advised in the premises and having entered the foregoing Findings of Fact and Conclusions of Law now, therefore;

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1. That the Plaintiff is granted a divorce from the Defendant.

2. That the Plaintiff is awarded the care, custody and control of the three (3) minor children of the parties, namely, **AMANDA ASHLEY HIGHT**, born October 25, 1985; **ADAM PARKER HIGHT**, born June 5, 1987 and **SHAWN DAVID HIGHT**, born June 5, 1987 (Twin boys), subject to Defendant's rights to visit said children at all reasonable times and places, including but not limited to the following:

**A.** The Defendant is entitled to take the children every other weekend from 5:00 p.m. on Fridays until 7:30 p.m. on Sundays; and

**B.** The Defendant is entitled to visit with the children commencing at 9:30 a.m. and terminating at 7:30 p.m. on every other major holiday which shall be deemed to be Easter, Memorial Day, July 4, Labor Day and Thanksgiving. She shall commence her holiday visits with Thanksgiving of 1990; and

**C.** The Defendant is entitled to visit with the minor children every Christmas holiday commencing at 9:30

a.m. on December 26th and continuing until 6:00 p.m. on December 29th; and

D. The Plaintiff is entitled to have the children every Father's Day and the Defendant shall have the right to visit with the children every Mother's Day, irrespective of weekend visitations; and

E. The Defendant is entitled to take the children for two (2) weeks during the month of June and two (2) weeks during the month of August of each school summer vacation period and the Defendant will be allowed designate the dates for said summer visitation provided that she notifies the Plaintiff of those dates by May 1st of each year.

F. The Plaintiff is ordered to keep the Defendant advised of any major medical care required for the children as well as keeping her advised of their progress in school and other significant aspects of the children's lives.

3. The parties hereto have accumulated certain real and personal property during this marriage and said property is awarded as follows:

A. The Plaintiff is awarded the home of the parties located at 286 North 100 West, Price, Utah, provided that he assumes the outstanding indebtedness thereon and holds the Defendant harmless therefrom. Said home is more particularly described as follows:

BEGINNING at a point 50 feet South of the Northwest Corner of Lot 2, Block 7, LOCAL SURVEY, a.k.a. TIDWELL'S SURVEY of a part of Section 16, Township 14 South, Range 10 East, of Salt Lake Base and Meridian, according to the official plat thereof; and running thence East 210 feet; thence South 59 7/8 feet; thence West 210 feet; thence North 59 7/8 feet to the point of beginning.

Together with all improvements and appurtenances thereunto appertaining.

B. The Plaintiff is awarded the 1980 Honda automobile and the 1974 Porsche automobile.

C. The Defendant is awarded the 1985 Ford Bronco.

D. The Defendant is awarded the savings bonds with a value of approximately THREE THOUSAND FIVE HUNDRED ($3,500.00) DOLLARS.

E. Each party is awarded those items of personal property in his or her possession as of October 15, 1990.

F. The Plaintiff is ordered to furnish the Defendant with a working and useable washing machine.

G. Each party is awarded his or her respective retirement benefits, free and clear of all claims of the other party.

4. No child support is awarded herein.

5. No alimony is awarded herein.

6. The parties hereto have accumulated certain debts and obligations during the marriage and the Defendant

has accumulated certain debts and obligations for her medical treatment following the separation of the parties, said debts and obligations are allocated as follows:

A. The Plaintiff is ordered to assume and pay the outstanding debts and obligations as designated in his Financial Declaration, namely, Hanover Mastercard (new account), Hanover Mastercard (old account), the Discover Card, the Sears account, the children's ABC books, and the Fleetwood mortgage on the home together with various medical and dental bills accumulated on behalf of the minor children.

B. The Plaintiff is ordered to pay one-half of the medical expenses incurred by the Defendant as stated in her Financial Declaration.

C. The Defendant is ordered to pay one-half of the medical expenses incurred by her as stated in her Financial Declaration.

7. Each party is ordered to maintain medical, dental and optical insurance on the minor children of the parties if it is available through a group policy at their place of employment, as a benefit of their employment at little or no expense and each party is further ordered to pay one-half of any reasonable and necessary major medical, dental and/or optical expense incurred for and on behalf of the minor children which is not covered by a policy of insurance. The Plaintiff's insurance shall be designated as the primary carrier.

8. Each party is ordered to pay his or her respective Court costs and attorney's fees in this matter.

9. Each parties' Motion for Reconsideration is hereby denied.

10. This Amended Decree of Divorce is entered herein Nunc Pro Tunc, and is retroactive back to the date of the entry of the original Decree of Divorce on January 18, 1991.

DATED this 4 day of February, 1992.

BOYD BUNNELL
District Court Judge

ADDENDUM B

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON PETITION FOR MODIFICATION FROM MODIFICATION HEARING

FILED ORIGINAL

NOV -4 94

SEVENTH DISTRICT COURT
STATE OF UTAH

JOANE PAPPAS WHITE #3445
Attorney for Plaintiff
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Telephone: (801) 637-0177

IN THE SEVENTH DISTRICT COURT IN AND FOR CARBON COUNTY, STATE OF UTAH

| | |
|---|---|
| DAVID HIGHT,<br><br>Plaintiff,<br>Vs.<br><br>GLORIA J. HIGHT,<br><br>Defendant. | FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PETITION FOR MODIFICATION<br><br>Civil No. 890715978<br><br>Judge Bryner |

Plaintiff's Petition for Modification of Decree came on regularly for hearing before the Court on the 26th day of August, 1994, the Honorable **BRYCE K. BRYNER**, District Court Judge, presiding. Plaintiff was personally present and represented by his attorney, **JOANE PAPPAS WHITE**. Defendant was personally present and represented by her attorney, **HARRY CASTON**. The Court received sworn testimony from the parties, received certain exhibits into evidence and took the matter under advisement and now, being fully advised in the premises the Court finds as follows:

## FINDINGS OF FACT

1. The parties hereto were divorced by Decree entered by the above-entitled Court on the 18th day of January, 1991.

2. Said Decree of Divorce awarded the Plaintiff father the legal care and custody of the three (3) minor children of the parties, namely, **AMANDA ASHLEY HIGHT**, born October 25, 1985; **ADAM PARKER HIGHT**, born June 5, 1987 and **SHAWN DAVID HIGHT**, born June 5, 1987 (twin boys).

3. At the time of the entry of the Decree of Divorce, the Defendant had average gross income of NINE HUNDRED NINETY ($990.00) DOLLARS per month. She now has monthly gross income of TWO THOUSAND EIGHT HUNDRED THIRTY-EIGHT ($2,838.00) DOLLARS from her employment with the U.S. Post Office.

4. All of Defendant's medical expenses which were encompassed and contemplated by paragraph 9 of the Findings of Fact have been discharged by Defendant's Chapter 7 bankruptcy.

5. The Court finds that an increase in income of ONE THOUSAND EIGHT HUNDRED FORTY-EIGHT ($1,848.00) DOLLARS per month constitutes a material and substantial change in the conditions of the parties since the time of the entry of the Decree of Divorce.

6. The Court finds that the Plaintiff is employed by Sears as a service technician and has monthly gross income of TWO THOUSAND FIVE HUNDRED THIRTY-TWO ($2,532.00) DOLLARS.

7. Based on the present income of the parties, the Uniform Child Support Guidelines provide for child support to be paid by the Defendant to the Plaintiff in the sum of SIX

HUNDRED EIGHTY-NINE ($689.00) DOLLARS per month. The only question remaining to the Court is whether good cause exists to deviate, at Defendant's request, from the guideline amount.

8. In analyzing the Defendant's monthly expenses, the Court finds the following:

A. The Defendant has no expenses out of the ordinary, or any types of expenses that have not already been taken into consideration by the guidelines, except for her medical expenses of SEVEN THOUSAND EIGHT HUNDRED SIXTY-SEVEN DOLLARS THIRTY-NINE CENTS ($7,867.39). (The total on exhibit 9 should be corrected to $7,867.39 as Gold Cross Ambulance has been paid off, Pioneer Valley Hospital has been reduced by $50.00, and 80% of the bills from Dr. Reyser and Consultant Radiologist will be paid by the insurance company according to the testimony of the Defendant. The Court also notes that the bill from University Hospital for $5,543.71 has been submitted to the Defendant's insurance company but it has not yet been determined whether payment will be made). She has had certain home repairs which necessitated a $4,000.00 loan but the monthly payment thereon of $260.00 is not so out of proportion to her income that it would, by itself, justify a deviation from the guidelines.

B. In arriving at the above findings, the Court has considered that the Defendant has net income of EIGHT HUNDRED ($800.00) DOLLARS every two (2) weeks or ONE THOUSAND SEVEN HUNDRED TWENTY ($1,720.00) DOLLARS for a 4.3

work week month. She has expenses of TWO THOUSAND ONE HUNDRED TWO DOLLARS TWENTY-FIVE CENTS ($2,102.25) (Exhibit No. 9) and a TWENTY ($20.00) DOLLAR payment per month to Levitz and a payment to Signet on the balance of ONE THOUSAND TWO HUNDRED ($1,200.00) DOLLARS on which no monthly payment was furnished.

C. The Defendant presented testimony that she has average medical expenses each month which are not covered by insurance in the amount of SEVEN HUNDRED NINE ($709.00) DOLLARS as a result of her schizo-affective bi-polar disorder. Defendant further stated that this amount was computed by adding up the face amount of checks she has written in the past year but Defendant did not provide any documentation to support her claim.

9. The Court finds that Defendant's medical expenses are extraordinary in light of her psychological condition and that it would be unjust to require her to pay the entire SIX HUNDRED EIGHTY-NINE ($689.00) DOLLARS per month as child support. Accordingly, the Court also finds that the presumption of correctness of the guideline amount has been sufficiently rebutted and that Defendant should be required to pay child support in the amount of ONE HUNDRED SEVENTY-FIVE ($175.00) DOLLARS per child per month for a total of FIVE HUNDRED TWENTY-FIVE ($525.00) DOLLARS in child support, commencing with the month of August, 1994.

10. The Court recognizes that the Petition to Modify was filed in February of 1994 but also takes into

consideration the fact that the Defendant has no savings and it would be impractical to require her to pay the sum of FIVE HUNDRED TWENTY-FIVE ($525.00) DOLLARS per month since January of 1994.

11. The FIVE HUNDRED TWENTY-FIVE ($525.00) DOLLARS per month in child support was determined after a consideration of the factors stated below as required by Section 78-45-7:

A. The standard of living and situation of both parties: The Court finds that the Defendant is living in a mobile home which she purchased in November of 1993 for THREE THOUSAND FIVE HUNDRED ($3,500.00) DOLLARS. Substantial repairs have had to be made on the home which required a FOUR THOUSAND ($4,000.00) DOLLAR loan. The Defendant is renting the lot on which the mobile home is situated. The Defendant has an automobile which is paid for and the Court, therefore, concludes that she is living a rather austere life style but one which is adequate. The has been supporting himself and his three (3) children on his income of approximately TWO THOUSAND FIVE HUNDRED ($2,500.00) DOLLARS per month. The Court finds that his standard of living could not be much different from that of the Defendant who has actually had more disposable income than he in the past.

B. Relative wealth and income of each party: Each party has regular employment with the Plaintiff earning TWO THOUSAND FIVE HUNDRED THIRTY-TWO ($2,532.00) DOLLARS per

month gross income and the Defendant earning TWO THOUSAND EIGHT HUNDRED THIRTY-EIGHT ($2,838.00) DOLLARS per month gross income. Neither party has any substantial savings accounts nor does either party have any substantial material assets.

C. Ability of the Defendant to earn: The Defendant is employed by the U.S. Postal Service where she earned FORTY-ONE THOUSAND FIVE HUNDRED ($41,500.00) DOLLARS in 1993 which included overtime. However, at the present time, she is earning SIXTEEN DOLLARS FIFTY CENTS ($16.50) per hour. Her employment is secure even though she has been hospitalized several times in 1991 and in 1994. She has received full pay during those hospitalizations.

D. Ability of the Plaintiff to earn: The Plaintiff is employed by Sears as a service technician. His employment is secure and should continue for the foreseeable future. He currently gross income of TWO THOUSAND FIVE HUNDRED THIRTY-TWO ($2,532.00) DOLLARS per month.

E. Needs of the parties and the children: The Plaintiff father has the legal custody of the three (3) minor children and places them in daycare when they are not in school while he is at work. His reasonable needs and the needs of the children exceed his income and he is, therefore, in need of assistance with child support. The Defendant has needs each month of ONE THOUSAND NINE HUNDRED THIRTY-EIGHT ($1,938.00) DOLLARS ($2,122.00 from Exhibit 9 and $709.00 in child support which has been reduced to $525.00). However, the

Court also finds that the maintenance costs and entertainment costs appear to be excessive and could be reduced.

F. The age of the parties: No testimony was presented with regard to the age of the parties but their appearance would indicate to the Court that each party is in their late twenties or early thirties.

G. Neither party has any responsibility for the support of others not contemplated by the facts of this case.

12. The Defendant should also be required to pay to the Plaintiff one-half of the actually incurred work related child care costs as provided by Section 78-45-7.16(1), Utah Code Annotated. The Court finds that the actually incurred child care costs are the sum of $400.00 per month at the current time.

13. The Defendant shall pay one-half of the out-of-pocket health insurance premiums for the children. The Court finds that the premium paid for the children each month out-of-pocket by the Plaintiff is EIGHTY ($80.00) DOLLARS and the Defendant should be required to pay one-half of that amount which is the sum of FORTY ($40.00) DOLLARS pursuant to Section 78-45-7.15(3), Utah Code Annotated.

14. The Court finds that an Order to Withhold and Deliver should be immediately implemented pursuant to Title 62A Chapter 11, Parts IV and V, Utah Code Annotated.

15. Plaintiff has requested assistance in paying his attorney fee. Plaintiff's attorney proffered that she has expended 8 3/4 hours on this case at the rate of ONE HUNDRED ($100.00) DOLLARS per hour for a total of EIGHT HUNDRED SEVENTY-FIVE ($875.00) DOLLARS. In determining whether to award an attorney's fee, the Court must consider the financial need of the receiving spouse, the ability of the other spouse to pay, and the reasonableness of the requested fees. The Court may also consider, among other factors, the difficulty of the litigation, the efficiency of the attorneys, the reasonableness of the number of hours spent on the case, and the fee customarily charged in the locality, the amount involved in the case and the result obtained and the expertise and experience of the attorneys involved. The Court finds, in this matter, that the Plaintiff has need of assistance in paying his fees; however, the Court recognizes that the Defendant, because of her extraordinary medical expenses, can be expected to pay only a portion of Plaintiff's attorney's fees in light of the fact that the Plaintiff has prevailed in this matter. The Court finds that the amount requested is reasonable in view of the income of the parties and that the result attained, which was necessary to secure the rights of the minor children in their child support has been in the best interests of said children and further finds that the Plaintiff should be awarded one-half of the EIGHT HUNDRED SEVENTY-FIVE ($875.00) DOLLARS incurred in pursuing this case,

namely, the sum of FOUR HUNDRED THIRTY-SEVEN DOLLARS FIFTY CENTS ($437.50). The Defendant is ordered to pay said sum to the Plaintiff at the rate of FIFTY ($50.00) DOLLARS per month commencing with the month of September, 1994 and continuing each and every month thereafter until said sum has been fully paid.

The Court having entered the foregoing Findings of Fact now concludes as follows:

CONCLUSIONS OF LAW

1. A substantial and material change of circumstances has occurred with respect to the earning capacities of the parties since the time of the entry of the Decree of Divorce and said change justifies a modification of the Decree of Divorce with respect to child support and other issues associated therewith.

2. The Defendant is ordered to pay to the Plaintiff child support in the sum of ONE HUNDRED SEVENTY-FIVE ($175.00) DOLLARS per child per month for a total of FIVE HUNDRED TWENTY-FIVE ($525.00) DOLLARS per month together with one-half of the actually incurred child care costs which is currently the sum of TWO HUNDRED ($200.00) DOLLARS per month together with one-half of the actually incurred insurance premiums for medical insurance for the children which is the sum of FORTY ($40.00) DOLLARS per month for a total of SEVEN HUNDRED SIXTY-FIVE ($765.00) DOLLARS per month for and as child support pursuant to the Utah Uniform Child Support

Guidelines and the attached worksheet attached hereto as Exhibit A and incorporated herein by reference. Said child support shall commence with the month of August, 1994 and shall continue each and every month thereafter until further order of this Court.

3. In the event that the Plaintiff experiences any change in the actually incurred child care expense for his employment or in the actually incurred medical premiums paid by him for the benefit of the minor children, he shall immediately notify the Defendant and any third party agency such as the Office of Recovery Services, of said change.

4. The Defendant is ordered to pay to the Plaintiff the sum of FOUR HUNDRED THIRTY-SEVEN DOLLARS FIFTY CENTS ($437.50) for and as a portion of Plaintiff's attorney's fees in this matter. Defendant shall pay said sum to the Plaintiff at the rate of FIFTY ($50.00) DOLLARS per month commencing with the month of September, 1994 and continuing each and every month thereafter until said sum has been fully paid.

DATED this 4th day of ~~September~~ Nov., 1994.

Bryce K. Bryner

BRYCE K. BRYNER
District Court Judge

## INSURANCE PREMIUM AND CHILD CARE ADJUSTMENT WORKSHEET

### INSURANCE ADJUSTMENT

Use this section of the worksheet to calculate how the children's medical insurance premium expenses change the amount the obligor pays t the obligee.

If the OBLIGOR parent is ordered to maintain medical insurance for the children complete this section.

| | |
|---|---|
| A. Enter the amount of the children's portion of the medical insurance premium actually paid by the obligor. | $ |
| B. Multiply Line A. by .50 to obtain the obligee's share of the premium. | $ |
| C. Subtract the amount in Line B. from the base child support award to obtain the amount the obligor pays to the obligee for the months the premium is actually paid. Enter the result here. | $ |

If the OBLIGEE parent is ordered to maintain medical insurance for the children complete this section.

| | |
|---|---|
| D. Enter the amount of the children's portion of the medical insurance premium actually paid by the obligee. | $ 80 |
| E. Multiply Line D. by .50 to obtain the obligor's share of the premium. | $ 40 |
| F. Add the amount in Line E. to the base child support award to obtain the amount the obligor pays to the obligee for the months the premium is actually paid. Enter the result here. | $ 729 |

No credit or offset is allowed unless the premium is actually paid. If the premium is not paid, the obligor must pay the amount of the base child support award.

### CHILD CARE ADJUSTMENT

Use this section of the worksheet to calculate how the children's child care expenses change the amount the obligor pays to the obligee.

| | |
|---|---|
| G. Enter the average amount of the monthly child care expense actually paid by the obligee. | $ 400 |
| H. Multiply Line G. by .50 to obtain the obligor's share of the child care expense. Enter the result here. Complete box I, J, or K. below. | $ 200 |
| I. <u>If neither parent is maintaining insurance,</u> add the amount in Line H. to the base child support award to obtain the amount the obligor pays to the obligee for the months the child care expense is incurred. Enter the result here. | $ |
| J. <u>If the obligor is maintaining insurance,</u> add the amount in Line H. to the amount in Line C. to obtain the amount the obligor pays to the obligee for the months the child care expense is incurred. Enter the result here. | $ |
| K. <u>If the obligee is maintaining insurance,</u> add the amount in Line H. to the amount in Line F. to obtain the amount the obligor pays to the obligee for the months the child care expense is incurred. Enter the result here. | $ 929 |

Attorney Bar No. 3445

IN THE Seventh DISTRICT COURT

Carbon COUNTY, STATE OF UTAH

| | | |
|---|---|---|
| DAVID HIGHT, | ) | CHILD SUPPORT OBLIGATION WORK |
| | ) | (SOLE CUSTODY AND PATERN |
| vs. | ) | |
| | ) | |
| GLORIA J. HIGHT, | ) | Civil No. 890715978 |

| | MOTHER | FATHER | COMBI |
|---|---|---|---|
| 1. Enter the # of natural and adopted children of this mother and father for whom support is to be awarded. | ////////// ////////// | ////////// ////////// | 3 |
| 2a. Enter the father's and mother's gross monthly income. Refer to Instructions for definition of income. | $ 2838 | $ 2532 | /////// /////// /////// |
| 2b. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case). | - | - | /////// /////// |
| 2c. Enter previously ordered child support. (Do not enter obligations ordered for the children in Line 1). | - | - | /////// /////// |
| 2d. OPTIONAL: Enter the amount from Line 12 of the Children in Present Home Worksheet for either parent. | - | - | /////// /////// |
| 3. Subtract Lines 2b, 2c, and 2d from 2a. This is the Adjusted Gross Income for child support purposes. | $ 2838 | $ 2532 | $ 5370 |
| 4. Take the COMBINED figure in Line 3 and the number of children in Line 1 to the Support Table. Find the Base Combined Support Obligation. Enter it here. | ////////// ////////// ////////// | ////////// ////////// ////////// | $ 1300 |
| 5. Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3. | 53 % | 47 % | /////// /////// |
| 6. Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation. | $ 689 | $ 611 | /////// /////// |

| | |
|---|---|
| 7. BASE CHILD SUPPORT AWARD: Bring down the amount in Line 6 for the Obligor Parent or enter the amount from the Low Income Table. | $ 689 |

8. Which parent is the obligor? (X) Mother ( ) Father

9. Is the support award ordered different from the guideline amount in Line 7?
(X) Yes ( ) No If YES, enter the amount ordered: $175 per child total $525

10. What were the reasons stated by the Court for the deviation?
( ) property settlement
( ) excessive debts of the marriage
( ) absence of need of the custodial parent
(X) other: Extraordinary medical expenses

ORIGINAL



JOANE PAPPAS WHITE #3445
Attorney for Plaintiff
Fifth Street Plaza, Suite 1
475 East Main Street
Price, Utah 84501
Telephone: (801) 637-0177

IN THE SEVENTH DISTRICT COURT IN AND FOR CARBON COUNTY, STATE OF UTAH

| | |
|---|---|
| DAVID HIGHT,<br><br>Plaintiff,<br>Vs.<br><br>GLORIA J. HIGHT,<br><br>Defendant. | ORDER ON PETITION FOR MODIFICATION<br><br>Civil No. 890715978<br><br>Judge Bryner |

Plaintiff's Petition for Modification of Decree came on regularly for hearing before the Court on the 26th day of August, 1994, the Honorable BRYCE K. BRYNER, District Court Judge, presiding. Plaintiff was personally present and represented by his attorney, JOANE PAPPAS WHITE. Defendant was personally present and represented by her attorney, HARRY CASTON. The Court received sworn testimony from the parties, received certain exhibits into evidence and took the matter under advisement and now, being fully advised in the premises and the Court having entered the foregoing Findings of Fact and Conclusions of Law now, therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. A substantial and material change of circumstances has occurred with respect to the earning capacities of the parties since the time of the entry of the Decree of Divorce and said change justifies a modification of the Decree of Divorce with respect to child support and other issues associated therewith.

2. The Defendant is ordered to pay to the Plaintiff child support in the sum of ONE HUNDRED SEVENTY-FIVE ($175.00) DOLLARS per child per month for a total of FIVE HUNDRED TWENTY-FIVE ($525.00) DOLLARS per month together with one-half of the actually incurred child care costs which is currently the sum of TWO HUNDRED ($200.00) DOLLARS per month together with one-half of the actually incurred insurance premiums for medical insurance for the children which is the sum of FORTY ($40.00) DOLLARS per month for a total of SEVEN HUNDRED SIXTY-FIVE ($765.00) DOLLARS per month for and as child support pursuant to the Utah Uniform Child Support Guidelines and the attached worksheet attached hereto as Exhibit A and incorporated herein by reference. Said child support shall commence with the month of August, 1994 and shall continue each and every month thereafter until further order of this Court.

3. In the event that the Plaintiff experiences any change in the actually incurred child care expense for his employment or in the actually incurred medical premiums paid by him for the benefit of the minor children, he shall

immediately notify the Defendant and any third party agency such as the Office of Recovery Services, of said change.

4. The Defendant is ordered to pay to the Plaintiff the sum of FOUR HUNDRED THIRTY-SEVEN DOLLARS FIFTY CENTS ($437.50) for and as a portion of Plaintiff's attorney's fees in this matter. Defendant shall pay said sum to the Plaintiff at the rate of FIFTY ($50.00) DOLLARS per month commencing with the month of September, 1994 and continuing each and every month thereafter until said sum has been fully paid.

DATED this 4th day of ~~September~~ Nov., 1994.

BRYCE K. BRYNER
District Court Judge

Attorney Bar No. 3445

IN THE Seventh DISTRICT COURT

Carbon COUNTY, STATE OF UTAH

DAVID HIGHT,

vs.

GLORIA J. HIGHT,

CHILD SUPPORT OBLIGATION WORKS
(SOLE CUSTODY AND PATERNI

Civil No. 890715978

| | MOTHER | FATHER | COMBIN |
|---|---|---|---|
| 1. Enter the # of natural and adopted children of this mother and father for whom support is to be awarded. | | | 3 |
| 2a. Enter the father's and mother's gross monthly income. Refer to Instructions for definition of income. | $ 2838 | $ 2532 | |
| 2b. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case). | - | - | |
| 2c. Enter previously ordered child support. (Do not enter obligations ordered for the children in Line 1). | - | - | |
| 2d. OPTIONAL: Enter the amount from Line 12 of the Children in Present Home Worksheet for either parent. | - | - | |
| 3. Subtract Lines 2b, 2c, and 2d from 2a. This is the Adjusted Gross Income for child support purposes. | $ 2838 | $ 2532 | $ 5370 |
| 4. Take the COMBINED figure in Line 3 and the number of children in Line 1 to the Support Table. Find the Base Combined Support Obligation. Enter it here. | | | $ 1300 |
| 5. Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3. | 53 % | 47 % | |
| 6. Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation. | $ 689 | $ 611 | |

| | |
|---|---|
| 7. BASE CHILD SUPPORT AWARD: Bring down the amount in Line 6 for the Obligor Parent or enter the amount from the Low Income Table. | $ 689 |

8. Which parent is the obligor? (X) Mother ( ) Father

9. Is the support award ordered different from the guideline amount in Line 7?
(X) Yes ( ) No If YES, enter the amount ordered: $175 per child total $525

10. What were the reasons stated by the Court for the deviation?
( ) property settlement
( ) excessive debts of the marriage
( ) absence of need of the custodial parent
(X) other: Extraordinary medical expenses

## INSURANCE PREMIUM AND CHILD CARE ADJUSTMENT WORKSHEET

### INSURANCE ADJUSTMENT

Use this section of the worksheet to calculate how the children's medical insurance premium expenses change the amount the obligor pays to the obligee.

If the OBLIGOR parent is ordered to maintain medical insurance for the children complete this section.

| | |
|---|---|
| A. Enter the amount of the children's portion of the medical insurance premium actually paid by the obligor. | $ |
| B. Multiply Line A. by .50 to obtain the obligee's share of the premium. | $ |
| C. Subtract the amount in Line B. from the base child support award to obtain the amount the obligor pays to the obligee for the months the premium is actually paid. Enter the result here. | $ |

If the OBLIGEE parent is ordered to maintain medical insurance for the children complete this section.

| | |
|---|---|
| D. Enter the amount of the children's portion of the medical insurance premium actually paid by the obligee. | $ 80 |
| E. Multiply Line D. by .50 to obtain the obligor's share of the premium. | $ 40 |
| F. Add the amount in Line E. to the base child support award to obtain the amount the obligor pays to the obligee for the months the premium is actually paid. Enter the result here. | $ 729 |

No credit or offset is allowed unless the premium is actually paid. If the premium is not paid, the obligor must pay the amount of the base child support award.

### CHILD CARE ADJUSTMENT

Use this section of the worksheet to calculate how the children's child care expenses change the amount the obligor pays to the obligee.

| | |
|---|---|
| G. Enter the average amount of the monthly child care expense actually paid by the obligee. | $ 400 |
| H. Multiply Line G. by .50 to obtain the obligor's share of the child care expense. Enter the result here. Complete box I, J, or K. below. | $ 200 |
| I. <u>If neither parent is maintaining insurance,</u> add the amount in Line H. to the base child support award to obtain the amount the obligor pays to the obligee for the months the child care expense is incurred. Enter the result here. | $ |
| J. <u>If the obligor is maintaining insurance,</u> add the amount in Line H. to the amount in Line C. to obtain the amount the obligor pays to the obligee for the months the child care expense is incurred. Enter the result here. | $ |
| K. <u>If the obligee is maintaining insurance,</u> add the amount in Line H. to the amount in Line F. to obtain the amount the obligor pays to the obligee for the months the child care expense is incurred. Enter the result here. | $ 929 |

ADDENDUM C

AFFIDAVIT OF DAVID HIGHT

**IN THE UTAH COURT OF APPEALS**

| | | |
|---|---|---|
| DAVID HIGHT<br><br>Plaintiff/Appellee,<br>vs.<br><br>GLORIA J. HIGHT<br><br>Defendant/Appellant. | : | AFFIDAVIT OF DAVID HIGHT<br><br>Case No. 940721-CA<br><br>Priority 15 |

I, David Hight, being first duly sworn upon oath, hereby depose and state as follows:

1. I was Plaintiff in the divorce action, Petitioner in the modification procedure and Appellee in the current matter.

2. At all times since the entry of the Decree of Divorce on January 18, 1991, I have been the sole custodian of our three (3) children Amanda Ashley Hight, born October 25, 1985; Adam Parker Hight, born June 5, 1987; and Shawn David Hight, born June 5, 1987.

3. On February 9, 1994 I filed the Petition for Modification concerning child support because I discovered that my ex-wife, Gloria Hight, had been fully re-employed as a postal worker at the United States Post Office for over a year.

4. Although she had been fully employed at an income over $40,000.00, Gloria had failed to provide any child support whatsoever for our children nor had she advised me of her ability to do so.

5. Following the entry of the Order on Petition for Modification, Gloria has failed to pay any of the

child support ordered by the Court. She has additionally failed to provide any of the attorney's fees awarded to me in the modification proceeding. She has also failed to pay any of the child care costs or any of the medical expenses as required by the Order of Modification or the Decree of Divorce, respectively.

6. After the filing of the Petition for Modification, Gloria made one (1) voluntary $10.00 payment of child support. Office of Recovery Services made one (1) garnishment of Gloria's taxes for $300.00 after the commencement of the Petition for Modification. Since the filing of the appeal, the Office of Recovery Services has advised me that they will not attempt any further child support collection activities until the appeal is resolved.

7. Following the entry of the Court's Order on Petition for Modification on November 4, 1995, Gloria called me at 6:38 p.m. on November 16, 1995. She informed me that she would appeal this matter before she would pay the child support or attorney's fees. She advised me that she would voluntarily agree to pay $100.00 per child per month and if that wasn't enough she would just quit her employment and never pay anything and appeal the case. I took notes on the conversation and believe she meant what she said.

8. My income has increased by only $125.00 per month since the time of the entry of the Decree of Divorce in 1991. The needs of the minor children have increased substantially due to the increase in their ages and the cost of living.

9. The minor children and I are really having a financial struggle to meet the costs and attorney's fees of this appeal. My attorney has advanced all of the costs on this case and I am attempting to make a modest monthly payment toward the attorney's fees; however, this appeal is causing a substantial hardship to the children as it is expending monies that we do not have available to us.

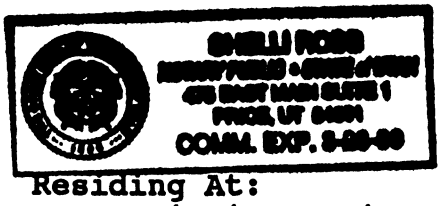
10. In my opinion, Gloria knows the hardship that the children and I are experiencing as a result of this appeal and it was the basis of her threat to pursue the appeal if I would not accept her terms and conditions.

WHEREFORE, Affiant prays that the Court determine that Appellant's appeal is without merit and has been filed for the sole purpose of causing a delay in the collection of Appellant's child support obligations and causing serious financial distress to the Affiant. Affiant asks that this Court remand this matter to the Trial Court for an award of Affiant's Court costs and attorney's fees.

DATED this 18th day of May, 1995.

DAVID HIGHT

Subscribed and sworn to before me this 18th day of May, 1995.




NOTARY PUBLIC

Residing At: Price, UT

My Commission Expires: March 28, 95

ADDENDUM D

SECTION 78-45-1 ET. SEQ.,
UTAH CODE ANNOTATED
THE UNIFORM CIVIL LIABILITY FOR SUPPORT ACT

**78-44-39. Duties under prior law — Property to be included in initial report.**

(1) This chapter does not relieve a holder of a duty to report, pay, or deliver property arising before July 1, 1983. Such holder who fails to comply before that date is subject to the applicable enforcement and penalty provisions in existence at that time and those provisions are continued in effect for the purpose of this subsection, subject to Subsection 78-44-30(2).

(2) The initial report to be filed under this chapter for property that was not required to be reported before July 1, 1983, but which is subject to this chapter shall include all items of property that would have been presumed abandoned during the ten-year period prior to July 1, 1983, as if this chapter had been in effect during that period. 1983

**78-44-40. Application and construction of chapter.**

This chapter shall be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. 1983

## CHAPTER 45

## UNIFORM CIVIL LIABILITY FOR SUPPORT ACT


Section
78-45-1. Short title.
78-45-2. Definitions.
78-45-3. Duty of man.
78-45-4. Duty of woman.
78-45-4.1. Duty of stepparent to support stepchild — Effect of termination of marriage or common law relationship.
78-45-4.2. Natural or adoptive parent has primary obligation of support — Right of stepparent to recover support.
78-45-4.3. Ward of state — Primary obligation to support.
78-45-5. Duty of obligor regardless of presence or residence of obligee.
78-45-6. District court jurisdiction.
78-45-7. Determination of amount of support — Rebuttable guidelines.
78-45-7.1. Medical expenses of dependent children — Assigning responsibility for payment — Insurance coverage — Income withholding.
78-45-7.2. Application of guidelines — Rebuttal.
78-45-7.3. Procedure — Documentation — Stipulation.
78-45-7.4. Obligation — Adjusted gross income used.
78-45-7.5. Determination of gross income — Imputed income.
78-45-7.6. Adjusted gross income.
78-45-7.7. Calculation of obligations.
78-45-7.8. Split custody — Obligation calculations.
78-45-7.9. Joint physical custody — Obligation calculations.
78-45-7.10. Reduction when child becomes 18.
78-45-7.11. Reduction for extended visitation.
78-45-7.12. Income in excess of tables.
78-45-7.13. Advisory committee — Membership and functions.
78-45-7.14. Base combined child support obligation table and low income table.
78-45-7.15. Medical expenses.
78-45-7.16. Child care expenses — Expenses not incurred.
78-45-7.17. Child care costs.
78-45-7.18. Limitation on amount of support ordered.
78-45-7.19. Determination of parental liability.
78-45-7.20. Accountability of support provided to benefit child — Accounting.
78-45-7.21. Award of tax exemption for dependent children.
78-45-8. Continuing jurisdiction.
78-45-9. Enforcement of right of support.
78-45-9.1. Repealed.
78-45-9.2. County attorney to assist obligee.
78-45-10. Appeals.
78-45-11. Husband and wife privileged communication inapplicable — Competency of spouses.
78-45-12. Rights are in addition to those presently existing.
78-45-13. Interpretation and construction.


**78-45-1. Short title.**

This act may be cited as the Uniform Civil Liability for Support Act. 1957

**78-45-2. Definitions.**

As used in this chapter:

(1) "Adjusted gross income" means income calculated under Subsection 78-45-7.6(1).

(2) "Administrative agency" means the Office of Recovery Services.

(3) "Base child support award" means the award that may be ordered and is calculated using the guidelines before additions for medical expenses and work-related child care costs.

(4) "Base combined child support obligation table," "child support table," "base child support obligation table," "low income table," or "table" means the appropriate table in Section 78-45-7.14.

(5) "Child" means a son or daughter younger than 18 years of age and a son or daughter of any age who is incapacitated from earning a living and is without sufficient means.

(6) "Court" means the district court, juvenile court, or administrative agency which may enter a child support order as defined in Section 62A-11-401.

(7) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically includes periodic payment pursuant to pension or retirement programs, or insurance policies of any type. Earnings specifically includes all gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital assets.

(8) "Guidelines" means the child support guidelines in Sections 78-45-7.2 through 78-45-7.21.

(9) "IV-D" means Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq.

(10) "Joint physical custody" means the child stays with each parent overnight for more than 25% of the year, and both parents contribute to the expenses of the child in addition to paying child support.

(11) "Medical expenses" means health and dental expenses and related insurance costs.

(12) "Obligee" means any person to whom a duty of support is owed.

(13) "Obligor" means any person owing a duty of support.

(14) "Office" means the Office of Recovery Services within the Department of Human Services.

(15) "Parent" includes a natural parent, an adoptive parent, or a stepparent.

(16) "Split custody" means that each parent has physical custody of at least one of the children.

(17) "State" includes any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(18) "Stepchild" means any child having a stepparent.

(19) "Stepparent" means a person ceremonially married to a child's natural or adoptive custodial parent who is not the child's natural or adoptive parent or a person living with the natural or adoptive parent as a common law spouse, whose common law marriage was entered into in this state under Section 30-1-4.5 or in any other state which recognizes the validity of common law marriages.

(20) "Work-related child care costs" means reasonable child care costs for up to a full-time work week or training schedule as necessitated by the employment or training of the custodial parent under Section 78-45-7.17.

(21) "Worksheets" means the forms used to aid in calculating the base child support award. 1994

**78-45-3. Duty of man.**

Every father shall support his child; and every man shall support his wife when she is in need. 1991

**78-45-4. Duty of woman.**

Every woman shall support her child; and she shall support her husband when he is in need. 1957

**78-45-4.1. Duty of stepparent to support stepchild — Effect of termination of marriage or common law relationship.**

A stepparent shall support a stepchild to the same extent that a natural or adoptive parent is required to support a child. Provided, however, that upon the termination of the marriage or common law relationship between the stepparent and the child's natural or adoptive parent the support obligation shall terminate. 1980

**78-45-4.2. Natural or adoptive parent has primary obligation of support — Right of stepparent to recover support.**

Nothing contained herein shall act to relieve the natural parent or adoptive parent of the primary obligation of support; furthermore, a stepparent has the same right to recover support for a stepchild from the natural or adoptive parent as any other obligee. 1979

**78-45-4.3. Ward of state — Primary obligation to support.**

Notwithstanding Section 78-45-2, a natural or an adoptive parent or stepparent whose minor child has become a ward of the state is not relieved of the primary obligation to support that child until he reaches the age of majority. 1983

**78-45-5. Duty of obligor regardless of presence or residence of obligee.**

An obligor present or resident in this state has the duty of support as defined in this act regardless of the presence or residence of the obligee. 1957

**78-45-6. District court jurisdiction.**

The district court shall have jurisdiction of all proceedings brought under this act. 1957

**78-45-7. Determination of amount of support — Rebuttable guidelines.**

(1) (a) Prospective support shall be equal to the amount granted by prior court order unless there has been a material change of circumstance on the part of the obligor or obligee.

(b) If the prior court order contains a stipulated provision for the automatic adjustment for prospective support, the prospective support shall be the amount as stated in the order, without a showing of a material change of circumstances, if the stipulated provision:

(i) is clear and unambiguous;

(ii) is self-executing;

(iii) provides for support which equals or exceeds the base child support award required by the guidelines; and

(iv) does not allow a decrease in support as a result of the obligor's voluntary reduction of income.

(2) If no prior court order exists, or a material change in circumstances has occurred, the court determining the amount of prospective support shall require each party to file a proposed award of child support using the guidelines before an order awarding child support or modifying an existing award may be granted.

(3) If the court finds sufficient evidence to rebut the guidelines, the court shall establish support after considering all relevant factors, including but not limited to:

(a) the standard of living and situation of the parties;

(b) the relative wealth and income of the parties;

(c) the ability of the obligor to earn;

(d) the ability of the obligee to earn;

(e) the needs of the obligee, the obligor, and the child;

(f) the ages of the parties; and

(g) the responsibilities of the obligor and the obligee for the support of others.

(4) When no prior court order exists, the court shall determine and assess all arrearages based upon the Uniform Child Support Guidelines described in this chapter. 1994

**78-45-7.1. Medical expenses of dependent children — Assigning responsibility for payment — Insurance coverage — Income withholding.**

The court shall include the following in its order:

(1) a provision assigning responsibility for the payment of reasonable and necessary medical expenses for the dependent children;

(2) a provision requiring the purchase and maintenance of appropriate insurance for the medical expenses of dependent children, if coverage is or becomes available at a reasonable cost;

(3) provisions for income withholding, in accordance with Title 62A, Chapter 11, Parts 4 and 5; and

(4) with regard to child support orders issued or modified on or after January 1, 1994, that are subject to income withholding, an order assessing against the obligor an additional $7 per month check processing fee to be included in the amount withheld and paid to the Office of Recovery Services within the Department of Human Services for the purposes of income withholding in accordance with Title 62A, Chapter 11, Parts 4 and 5. 1994

**78-45-7.2. Application of guidelines — Rebuttal.**

(1) The guidelines apply to any judicial or administrative order establishing or modifying an award of child support entered on or after July 1, 1989.

(2) (a) The child support guidelines shall be applied as a rebuttable presumption in establishing or modifying the amount of temporary or permanent child support.

(b) The rebuttable presumption means the provisions and considerations required by the guidelines, the award amounts resulting from the application of the guidelines, and the use of worksheets consistent with these guidelines are presumed to be correct, unless rebutted under the provisions of this section.

(3) A written finding or specific finding on the record supporting the conclusion that complying with a provision of the guidelines or ordering an award amount resulting from use of the guidelines would be unjust, inappropriate, or not in the best interest of a child in a particular case is sufficient to rebut the presumption in that case.

(4) (a) Natural or adoptive children of either parent who live in the home of that parent and are not children in common to both parties may at the option of either party be taken into account under the guidelines in setting or modifying a child support award, as provided in Subsection (5).

(b) Additional worksheets shall be prepared that compute the obligations of the respective parents for the additional children. The obligations shall then be subtracted from the appropriate parent's income before determining the award in the instant case.

(5) In a proceeding to modify an existing award, consideration of natural or adoptive children other than those in common to both parties may be applied to mitigate an increase in the award but may not be applied to justify a decrease in the award.

(6) With regard to child support orders, enactment of the guidelines and any subsequent change in the guidelines constitutes a substantial or material change of circumstances as a ground for modification or adjustment of a court order, if there is a difference of at least 25% between the existing order and the guidelines. In cases enforced under IV-D of Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., the office may request modification, in accordance with the requirements of the Family Support Act of 1988, Public Law 100-485, no more often than once every three years. 1994

**78-45-7.3. Procedure — Documentation — Stipulation.**

(1) In a default or uncontested proceeding, the moving party shall submit:

(a) a completed child support worksheet;

(b) the financial verification required by Subsection 78-45-7.5(5); and

(c) a written statement indicating whether or not the amount of child support requested is consistent with the guidelines.

(2) (a) If the documentation of income required under Subsection (1) is not available, a verified representation of the defaulting party's income by the moving party, based on the best evidence available, may be submitted.

(b) The evidence shall be in affidavit form and may only be offered after a copy has been provided to the defaulting party in accordance with Utah Rules of Civil Procedure or Title 63, Chapter 46b, Administrative Procedures Act, in an administrative proceeding.

(3) (a) In a stipulated proceeding, one of the moving parties shall submit:

(i) a completed child support worksheet;

(ii) the financial verification required by Subsection 78-45-7.5(5); and

(iii) a written statement indicating whether or not the amount of child support requested is consistent with the guidelines.

(b) A hearing is not required, but the guidelines shall be used to review the adequacy of a child support order negotiated by the parents.

(c) A stipulated amount for child support or combined child support and alimony is adequate under the guidelines if the stipulated child support amount or combined amount equals or exceeds the base child support award required by the guidelines. 1994

**78-45-7.4. Obligation — Adjusted gross income used.**

Adjusted gross income shall be used in calculating each parent's share of the base combined child support obligation. Only income of the natural or adoptive parents of the child may be used to determine the award under these guidelines. 1994

**78-45-7.5. Determination of gross income — Imputed income.**

(1) As used in the guidelines, "gross income" includes:

(a) prospective income from any source, including nonearned sources, except under Subsection (3); and

(b) income from salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment compensation, disability insurance benefits, and payments from "nonmeans-tested" government programs.

(2) Income from earned income sources is limited to the equivalent of one full-time job.

(3) Specifically excluded from gross income are:

(a) Aid to Families with Dependent Children (AFDC);

(b) benefits received under a housing subsidy program, the Job Training Partnership Act, S.S.I., Medicaid, Food Stamps, or General Assistance; and

(c) other similar means-tested welfare benefits received by a parent.

(4) (a) Gross income from self-employment or operation of a business shall be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts. The income and expenses from self-em-

ployment or operation of a business shall be reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support award Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts

(b) Gross income determined under this subsection may differ from the amount of business income determined for tax purposes

(5) (a) When possible gross income should first be computed on an annual basis and then recalculated to determine the average gross monthly income

(b) Each parent shall provide verification of current income Each parent shall provide year-to-date pay stubs or employer statements and complete copies of tax returns from at least the most recent year unless the court finds the verification is not reasonably available Verification of income from records maintained by the Office of Employment Security may be substituted for pay stubs, employer statements and income tax returns

(c) Historical and current earnings shall be used to determine whether an underemployment or overemployment situation exists

(6) Gross income includes income imputed to the parent under Subsection (7)

(7) (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed or a hearing is held and a finding made that the parent is voluntarily unemployed or underemployed

(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from work history occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community

(c) If a parent has no recent work history, income shall be imputed at least at the federal minimum wage for a 40-hour work week To impute a greater income the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation

(d) Income may not be imputed if any of the following conditions exist

(i) the reasonable costs of child care for the parents minor children approach or equal the amount of income the custodial parent can earn,

(ii) a parent is physically or mentally disabled to the extent he cannot earn minimum wage

(iii) a parent is engaged in career or occupational training to establish basic job skills, or

(iv) unusual emotional or physical needs of a child require the custodial parent s presence in the home

(8) (a) Gross income may not include the earnings of a child who is the subject of a child support award nor benefits to a child in the child's own right such as Supplemental Security Income

(b) Social Security benefits received by a child due to the earnings of a parent may be credited as child support to the parent upon whose earning record it is based, by crediting the amount against the potential obligation of that parent Other unearned income of a child may be considered as income to a parent depending upon the circumstances of each case 1994

**78-45-7.6. Adjusted gross income.**

(1) As used in the guidelines, "adjusted gross income" is the amount calculated by subtracting from gross income alimony previously ordered and paid and child support previously ordered

(2) The guidelines do not reduce the total child support award by adjusting the gross incomes of the parents for alimony ordered in the pending proceeding In establishing alimony, the court shall consider that in determining the child support, the guidelines do not provide a deduction from gross income for alimony 1989

**78-45-7.7. Calculation of obligations.**

(1) The parents' child support obligation shall be divided between them in proportion to their adjusted gross incomes, unless the low income table is applicable

(2) Except in cases of joint physical custody and split custody as defined in Section 78-45-2 and in cases where the obligor's adjusted gross income is $1,050 or less monthly, the base child support award shall be determined as follows

(a) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table

(b) Calculate each parent's proportionate share of the base combined child support obligation by multiplying the combined child support obligation by each parent's percentage of combined adjusted gross income

(3) In cases where the monthly adjusted gross income of the obligor is between $650 and $1,050, the base child support award shall be the lesser of the amount calculated in accordance with Subsection (2) and the amount calculated using the low income table

(4) The base combined child support obligation table provides combined child support obligations for up to six children For more than six children, additional amounts may be added to the base child support obligation shown Unless rebutted by Subsection 78-45-7 2(3), the amount ordered shall not be less than the amount which would be ordered for up to six children

(5) If the monthly adjusted gross income of the obligor is $649 or less, the court or administrative agency shall determine the amount of the child support obligation on a case-by-case basis, but the base child support award shall not be less than $20

(6) The amount shown on the table is the support amount for the total number of children, not an amount per child 1994

**78-45-7.8. Split custody — Obligation calculations.**

In cases of split custody, the base child support award shall be determined as follows

(1) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table Allocate a portion of the calculated amount between the parents in proportion to the number of children for whom each parent has physical custody The amounts so calculated are a tentative base child support obligation due each parent from the other parent for support of the child or children for whom each parent has physical custody

(2) Multiply the tentative base child support obligation due each parent by the percentage that the other parent's adjusted gross income bears to the total combined adjusted gross income of both parents.

(3) Subtract the lesser amount in Subsection (2) from the larger amount to determine the base child support award to be paid by the parent with the greater financial obligation. 1994

**78-45-7.9. Joint physical custody — Obligation calculations.**

In cases of joint physical custody, the base child support award shall be determined as follows:

(1) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table.

(2) Calculate each parent's proportionate share of the base combined child support obligation by multiplying the base combined child support obligation by each parent's percentage of combined adjusted gross income. The amounts so calculated are a tentative base child support obligation due from each parent for support of the children.

(3) Multiply each parent's tentative base child support obligation by the percentage of time the children spend with the other parent to determine each parent's tentative obligation to the other parent.

(4) Calculate the base child support award to be paid by the obligor by subtracting the lesser amount calculated in Subsection (3) from the larger amount.

(5) The parent determined to be the obligor in Subsection (4) shall pay the amount calculated in Subsection (4) when the obligee has physical custody. 1994

**78-45-7.10. Reduction when child becomes 18.**

(1) When a child becomes 18 years of age, or has graduated from high school during the child's normal and expected year of graduation, whichever occurs later, the base child support award is automatically reduced to reflect the lower base combined child support obligation shown in the table for the remaining number of children due child support, unless otherwise provided in the child support order.

(2) The award may not be reduced by a per child amount derived from the base child support award originally ordered. 1994

**78-45-7.11. Reduction for extended visitation.**

(1) The child support order shall provide that the base child support award be reduced by 50% for each child for time periods during which the child is with the noncustodial parent by order of the court or by written agreement of the parties for at least 25 of any 30 consecutive days. If the dependent child is a recipient of Aid to Families with Dependent Children, any agreement by the parties for reduction of child support during extended visitation shall be approved by the administrative agency. However, normal visitation and holiday visits to the custodial parent shall not be considered an interruption of the consecutive day requirement.

(2) For purposes of this section the per child amount to which the abatement applies shall be calculated by dividing the base child support award by the number of children included in the award. 1994

**78-45-7.12. Income in excess of tables.**

If the combined adjusted gross income exceeds the highest level specified in the table, an appropriate and just child support amount shall be ordered on a case-by-case basis, but the amount ordered may not be less than the highest level specified in the table for the number of children due support. 1994

**78-45-7.13. Advisory committee — Membership and functions.**

(1) On or before March 1, 1995, and every fourth year subsequently, the governor shall appoint an advisory committee consisting of:

(a) two representatives recommended by the Office of Recovery Services;

(b) two representatives recommended by the Judicial Council;

(c) two representatives recommended by the Utah State Bar Association; and

(d) an uneven number of additional persons, not to exceed five, who represent diverse interests related to child support issues, as the governor may consider appropriate. However, none of the individuals appointed under this subsection may be members of the Utah State Bar Association.

(2) (a) The advisory committee shall review the child support guidelines to ensure their application results in the determination of appropriate child support award amounts.

(b) The committee shall report to the Legislative Judiciary Interim Committee on or before October 1 in 1989 and 1991, and then on or before October 1 of every fourth year subsequently.

(c) The committee's report shall include recommendations of the majority of the committee, as well as specific recommendations of individual members of the committee.

(3) The committee members serve without compensation. Staff for the committee shall be provided from the existing budgets of the Department of Human Services and the Judicial Council. The committee ceases to exist no later than the date the subsequent committee under this section is appointed. 1994

**78-45-7.14. Base combined child support obligation table and low income table.**

The following includes the Base Combined Child Support Obligation Table and the Low Income Table:

BASE COMBINED CHILD SUPPORT OBLIGATION TABLE
(Both Parents)

| Monthly Combined Adj. Gross Income | | Number of Children | | | | | |
|---|---|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 | 6 |
| From | To | 1 | 2 | 3 | 4 | 5 | 6 |
| 650 — | 675 | 99 | 184 | 191 | 198 | 200 | 201 |
| 676 — | 700 | 103 | 190 | 198 | 205 | 207 | 209 |
| 701 — | 725 | 106 | 197 | 205 | 212 | 214 | 216 |
| 726 — | 750 | 110 | 204 | 212 | 220 | 221 | 223 |
| 751 — | 775 | 113 | 211 | 219 | 227 | 229 | 231 |
| 776 — | 800 | 117 | 218 | 226 | 234 | 236 | 238 |
| 801 — | 825 | 121 | 224 | 243 | 261 | 263 | 265 |
| 826 — | 850 | 124 | 231 | 253 | 275 | 277 | 279 |
| 851 — | 875 | 128 | 238 | 263 | 289 | 291 | 294 |
| 876 — | 900 | 132 | 245 | 274 | 303 | 305 | 308 |
| 901 — | 925 | 135 | 251 | 284 | 316 | 319 | 322 |
| 926 — | 950 | 139 | 258 | 294 | 330 | 333 | 336 |
| 951 — | 975 | 143 | 265 | 305 | 344 | 347 | 350 |
| 976 — | 1,000 | 146 | 272 | 315 | 358 | 361 | 364 |
| 1,001 — | 1,050 | 154 | 285 | 335 | 385 | 389 | 393 |

| Monthly Combined Adj. Gross Income | | Number of Children | | | | | |
|---|---|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 | 6 |
| 1,051 — | 1,100 | 161 | 299 | 356 | 413 | 417 | 421 |
| 1,101 — | 1,150 | 168 | 313 | 377 | 441 | 444 | 449 |
| 1,151 — | 1,200 | 176 | 326 | 387 | 449 | 454 | 460 |
| 1,201 — | 1,250 | 183 | 340 | 403 | 465 | 475 | 484 |
| 1,251 — | 1,300 | 190 | 353 | 418 | 482 | 496 | 508 |
| 1,301 — | 1,350 | 198 | 367 | 433 | 499 | 516 | 532 |
| 1,351 — | 1,400 | 205 | 381 | 448 | 515 | 537 | 556 |
| 1,401 — | 1,450 | 212 | 394 | 463 | 532 | 558 | 580 |
| 1,451 — | 1,500 | 220 | 408 | 478 | 549 | 579 | 605 |
| 1,501 — | 1,550 | 227 | 421 | 493 | 565 | 600 | 629 |
| 1,551 — | 1,600 | 234 | 435 | 509 | 582 | 620 | 653 |
| 1,601 — | 1,650 | 242 | 449 | 524 | 599 | 641 | 677 |
| 1,651 — | 1,700 | 249 | 462 | 539 | 615 | 662 | 701 |
| 1,701 — | 1,750 | 256 | 476 | 554 | 632 | 683 | 725 |
| 1,751 — | 1,800 | 264 | 489 | 569 | 649 | 704 | 749 |
| 1,801 — | 1,850 | 271 | 503 | 584 | 664 | 723 | 771 |
| 1,851 — | 1,900 | 278 | 517 | 597 | 677 | 736 | 786 |
| 1,901 — | 1,950 | 286 | 530 | 610 | 690 | 750 | 800 |
| 1,951 — | 2,000 | 293 | 544 | 622 | 700 | 752 | 813 |
| 2,001 — | 2,100 | 308 | 571 | 643 | 716 | 779 | 833 |
| 2,101 — | 2,200 | 319 | 592 | 666 | 741 | 807 | 862 |
| 2,201 — | 2,300 | 328 | 608 | 687 | 766 | 835 | 891 |
| 2,301 — | 2,400 | 336 | 625 | 708 | 791 | 862 | 921 |
| 2,401 — | 2,500 | 345 | 641 | 725 | 809 | 882 | 942 |
| 2,501 — | 2,600 | 354 | 658 | 746 | 834 | 909 | 972 |
| 2,601 — | 2,700 | 362 | 674 | 767 | 859 | 937 | 1,001 |
| 2,701 — | 2,800 | 371 | 691 | 788 | 885 | 964 | 1,031 |
| 2,801 — | 2,900 | 380 | 707 | 809 | 910 | 992 | 1,060 |
| 2,901 — | 3,000 | 388 | 724 | 830 | 936 | 1,020 | 1,090 |
| 3,001 — | 3,100 | 397 | 740 | 851 | 962 | 1,048 | 1,120 |
| 3,101 — | 3,200 | 406 | 756 | 872 | 987 | 1,076 | 1,149 |
| 3,201 — | 3,300 | 414 | 773 | 893 | 1,013 | 1,103 | 1,179 |
| 3,301 — | 3,400 | 423 | 789 | 914 | 1,039 | 1,131 | 1,208 |
| 3,401 — | 3,500 | 431 | 804 | 934 | 1,064 | 1,159 | 1,238 |
| 3,501 — | 3,600 | 438 | 817 | 953 | 1,090 | 1,187 | 1,268 |
| 3,601 — | 3,700 | 444 | 830 | 973 | 1,116 | 1,215 | 1,297 |
| 3,701 — | 3,800 | 451 | 843 | 992 | 1,141 | 1,243 | 1,327 |
| 3,801 — | 3,900 | 458 | 856 | 1,012 | 1,167 | 1,270 | 1,356 |
| 3,901 — | 4,000 | 465 | 870 | 1,031 | 1,192 | 1,297 | 1,386 |
| 4,001 — | 4,100 | 472 | 883 | 1,050 | 1,217 | 1,325 | 1,415 |
| 4,101 — | 4,200 | 479 | 896 | 1,069 | 1,242 | 1,352 | 1,444 |
| 4,201 — | 4,300 | 486 | 909 | 1,088 | 1,267 | 1,379 | 1,474 |
| 4,301 — | 4,400 | 493 | 923 | 1,107 | 1,292 | 1,407 | 1,503 |
| 4,401 — | 4,500 | 499 | 936 | 1,131 | 1,326 | 1,443 | 1,541 |
| 4,501 — | 4,600 | 506 | 949 | 1,150 | 1,350 | 1,470 | 1,570 |
| 4,601 — | 4,700 | 513 | 962 | 1,169 | 1,375 | 1,498 | 1,600 |
| 4,701 — | 4,800 | 520 | 975 | 1,188 | 1,400 | 1,525 | 1,629 |
| 4,801 — | 4,900 | 527 | 989 | 1,207 | 1,425 | 1,552 | 1,658 |
| 4,901 — | 5,000 | 534 | 1,002 | 1,226 | 1,450 | 1,580 | 1,687 |
| 5,001 — | 5,100 | 541 | 1,015 | 1,245 | 1,475 | 1,607 | 1,717 |
| 5,101 — | 5,200 | 547 | 1,028 | 1,264 | 1,500 | 1,634 | 1,746 |
| 5,201 — | 5,300 | 554 | 1,042 | 1,282 | 1,522 | 1,658 | 1,772 |
| 5,301 — | 5,400 | 561 | 1,055 | 1,300 | 1,544 | 1,682 | 1,797 |
| 5,401 — | 5,500 | 568 | 1,068 | 1,317 | 1,566 | 1,706 | 1,823 |
| 5,501 — | 5,600 | 575 | 1,081 | 1,335 | 1,588 | 1,730 | 1,848 |
| 5,601 — | 5,700 | 582 | 1,093 | 1,351 | 1,610 | 1,754 | 1,874 |
| 5,701 — | 5,800 | 586 | 1,103 | 1,367 | 1,632 | 1,778 | 1,899 |
| 5,801 — | 5,900 | 591 | 1,112 | 1,383 | 1,653 | 1,802 | 1,925 |
| 5,901 — | 6,000 | 596 | 1,122 | 1,398 | 1,675 | 1,826 | 1,950 |
| 6,001 — | 6,100 | 601 | 1,131 | 1,414 | 1,697 | 1,850 | 1,976 |
| 6,101 — | 6,200 | 605 | 1,141 | 1,430 | 1,719 | 1,874 | 2,001 |
| 6,201 — | 6,300 | 610 | 1,150 | 1,445 | 1,740 | 1,897 | 2,026 |
| 6,301 — | 6,400 | 615 | 1,159 | 1,461 | 1,762 | 1,921 | 2,052 |
| 6,401 — | 6,500 | 620 | 1,169 | 1,480 | 1,791 | 1,951 | 2,084 |
| 6,501 — | 6,600 | 624 | 1,178 | 1,495 | 1,812 | 1,975 | 2,109 |
| 6,601 — | 6,700 | 629 | 1,188 | 1,511 | 1,834 | 1,998 | 2,134 |
| 6,701 — | 6,800 | 629 | 1,188 | 1,511 | 1,834 | 1,998 | 2,134 |
| 6,801 — | 6,900 | 673 | 1,188 | 1,511 | 1,834 | 1,998 | 2,134 |
| 6,901 — | 7,000 | 680 | 1,188 | 1,511 | 1,834 | 1,998 | 2,134 |
| 7,001 — | 7,100 | 687 | 1,188 | 1,511 | 1,834 | 1,998 | 2,134 |
| 7,101 — | 7,200 | 694 | 1,188 | 1,511 | 1,834 | 1,998 | 2,134 |
| 7,201 — | 7,300 | 701 | 1,188 | 1,520 | 1,834 | 1,998 | 2,134 |
| 7,301 — | 7,400 | 706 | 1,189 | 1,531 | 1,834 | 1,998 | 2,134 |
| 7,401 — | 7,500 | 710 | 1,197 | 1,541 | 1,834 | 1,998 | 2,134 |
| 7,501 — | 7,600 | 715 | 1,205 | 1,551 | 1,834 | 1,998 | 2,134 |
| 7,601 — | 7,700 | 719 | 1,213 | 1,562 | 1,834 | 1,998 | 2,134 |
| 7,701 — | 7,800 | 723 | 1,220 | 1,572 | 1,834 | 1,998 | 2,134 |
| 7,801 — | 7,900 | 728 | 1,228 | 1,582 | 1,834 | 1,998 | 2,137 |
| 7,901 — | 8,000 | 732 | 1,236 | 1,592 | 1,834 | 2,000 | 2,150 |
| 8,001 — | 8,100 | 737 | 1,244 | 1,603 | 1,834 | 2,013 | 2,164 |
| 8,101 — | 8,200 | 741 | 1,252 | 1,613 | 1,841 | 2,026 | 2,178 |
| 8,201 — | 8,300 | 746 | 1,259 | 1,623 | 1,853 | 2,039 | 2,192 |
| 8,301 — | 8,400 | 750 | 1,267 | 1,633 | 1,864 | 2,052 | 2,206 |
| 8,401 — | 8,500 | 755 | 1,275 | 1,644 | 1,876 | 2,064 | 2,220 |
| 8,501 — | 8,600 | 759 | 1,283 | 1,654 | 1,887 | 2,077 | 2,234 |
| 8,601 — | 8,700 | 763 | 1,291 | 1,664 | 1,899 | 2,090 | 2,247 |
| 8,701 — | 8,800 | 768 | 1,298 | 1,675 | 1,911 | 2,103 | 2,261 |
| 8,801 — | 8,900 | 772 | 1,306 | 1,685 | 1,922 | 2,116 | 2,275 |
| 8,901 — | 9,000 | 777 | 1,314 | 1,695 | 1,934 | 2,129 | 2,289 |
| 9,001 — | 9,100 | 781 | 1,322 | 1,705 | 1,945 | 2,141 | 2,303 |
| 9,101 — | 9,200 | 786 | 1,330 | 1,716 | 1,957 | 2,154 | 2,317 |
| 9,201 — | 9,300 | 790 | 1,337 | 1,726 | 1,969 | 2,167 | 2,330 |
| 9,301 — | 9,400 | 795 | 1,345 | 1,736 | 1,980 | 2,180 | 2,344 |
| 9,401 — | 9,500 | 799 | 1,353 | 1,747 | 1,992 | 2,193 | 2,358 |
| 9,501 — | 9,600 | 803 | 1,361 | 1,757 | 2,003 | 2,206 | 2,372 |
| 9,601 — | 9,700 | 808 | 1,369 | 1,767 | 2,015 | 2,218 | 2,386 |
| 9,701 — | 9,800 | 812 | 1,376 | 1,777 | 2,027 | 2,231 | 2,400 |
| 9,801 — | 9,900 | 817 | 1,384 | 1,788 | 2,038 | 2,244 | 2,414 |
| 9,901 — | 10,000 | 821 | 1,392 | 1,798 | 2,050 | 2,257 | 2,427 |
| 10,001 — | 10,100 | 826 | 1,400 | 1,808 | 2,061 | 2,270 | 2,441 |

## LOW INCOME TABLE
(Obligor Parent Only)

| Monthly Adj. Gross Income | | Number of Children | | | | | |
|---|---|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 | 6 |
| From | To | | | | | | |
| 650 — | 675 | 23 | 23 | 23 | 23 | 24 | 24 |
| 676 — | 700 | 45 | 46 | 46 | 47 | 47 | 48 |
| 701 — | 725 | 68 | 68 | 69 | 70 | 71 | 71 |
| 726 — | 750 | 90 | 91 | 92 | 93 | 94 | 95 |
| 751 — | 775 | 113 | 114 | 115 | 116 | 118 | 119 |
| 776 — | 800 | | 137 | 138 | 140 | 141 | 143 |
| 801 — | 825 | | 159 | 161 | 163 | 165 | 166 |
| 826 — | 850 | | 182 | 184 | 186 | 188 | 190 |
| 851 — | 875 | | 205 | 207 | 209 | 212 | 214 |
| 876 — | 900 | | 228 | 230 | 233 | 235 | 238 |
| 901 — | 925 | | 250 | 253 | 256 | 259 | 261 |
| 926 — | 950 | | | 276 | 279 | 282 | 285 |
| 951 — | 975 | | | 299 | 302 | 306 | 309 |
| 976 — | 1,000 | | | | 326 | 329 | 333 |
| 1,001 — | 1,050 | | | | 372 | 376 | 380 |

1994

**78-45-7.15. Medical expenses.**

(1) The court shall order that insurance for the medical expenses of the minor children be provided by a parent if it is available at a reasonable cost.

(2) In determining which parent shall be ordered to maintain insurance for medical expenses, the court or administrative agency may consider the:

(a) reasonableness of the cost;

(b) availability of a group insurance policy;

(c) coverage of the policy; and

(d) preference of the custodial parent.

(3) The order shall require each parent to share equally the out-of-pocket costs of the premium actually paid by a parent for the children's portion of insurance.

(4) The children's portion of the premium is a per capita share of the premium actually paid. The premium expense for the children shall be calculated by dividing the premium amount by the number of persons covered under the policy and multiplying the result by the number of children in the instant case.

(5) The order shall require each parent to share equally all reasonable and necessary uninsured medical expenses, including deductibles and copayments, incurred for the dependent children and actually paid by the parents.

(6) The parent ordered to maintain insurance shall provide verification of coverage to the other parent, or to the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., upon initial enrollment of the dependent children, and thereafter on or before January 2 of each calendar year. The parent shall notify the other parent, or the Office of Recovery Services under Title IV of the

Social Security Act, 42 U S C Section 601 et seq , of any change of insurance carrier, premium, or benefits within 30 calendar days of the date he first knew or should have known of the change

(7) A parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of payment

(8) In addition to any other sanctions provided by the court a parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent s share of the expenses if that parent fails to comply with Subsections (6) and (7) 1994

**78-45-7.16. Child care expenses — Expenses not incurred.**

(1) The child support order shall require that each parent share equally the reasonable work-related child care expenses of the parents

(2) (a) If an actual expense for child care is incurred a parent shall begin paying his share on a monthly basis immediately upon presentation of proof of the child care expense, but if the child care expense ceases to be incurred, that parent may suspend making monthly payment of that expense while it is not being incurred, without obtaining a modification of the child support order

(b) (i) In the absence of a court order to the contrary a parent who incurs child care expense shall provide written verification of the cost and identity of a child care provider to the other parent upon initial engagement of a provider and thereafter on the request of the other parent

(ii) In the absence of a court order to the contrary, the parent shall notify the other parent of any change of child care provider or the monthly expense of child care within 30 calendar days of the date of the change

(3) In addition to any other sanctions provided by the court, a parent incurring child care expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if the parent incurring the expenses fails to comply with Subsection (2)(b) 1994

**78-45-7.17. Child care costs.**

(1) The need to include child care costs in the child support order is presumed, if the custodial parent or the noncustodial parent during extended visitation, is working and actually incurring the child care costs

(2) The need to include child care costs is not presumed, but may be awarded on a case-by-case basis, if the costs are related to the career or occupational training of the custodial parent, or if otherwise ordered by the court in the interest of justice 1994

**78-45-7.18. Limitation on amount of support ordered.**

(1) There is no maximum limit on the base child support award that may be ordered using the base combined child support obligation table, using the low income table, or awarding medical expenses except under Subsection (2)

(2) If amounts under either table as provided in Section 78-45-7 14 in combination with the award of medical expenses exceeds 50% of the obligor's adjusted gross income, or by adding the child care costs, total child support would exceed 50% of the obligor's adjusted gross income, the presumption under Section 78-45-7 17 is rebutted 1994

**78-45-7.19. Determination of parental liability.**

(1) The district court or administrative agency may issue an order determining the amount of a parent's liability for medical expenses of a dependent child when the parent

(a) is required by a prior court or administrative order to

(i) share those expenses with the other parent of the dependent child, or

(ii) obtain insurance for medical expenses but fails to do so, or

(b) receives direct payment from an insurer under insurance coverage obtained after the prior court or administrative order was issued

(2) If the prior court or administrative order does not specify what proportions of the expenses are to be shared, the district court may determine the amount of liability as may be reasonable and necessary

(3) This section applies to an order without regard to when it was issued 1994

**78-45-7.20. Accountability of support provided to benefit child — Accounting.**

(1) The court or administrative agency which issues the initial or modified order for child support may, upon the petition of the obligor, order prospectively the obligee to furnish an accounting of amounts provided for the child's benefit to the obligor, including an accounting or receipts

(2) The court or administrative agency may prescribe the frequency and the form of the accounting which shall include receipts and an accounting

(3) The obligor may petition for the accounting only if current on all child support that has been ordered 1994

**78-45-7.21. Award of tax exemption for dependent children.**

(1) No presumption exists as to which parent should be awarded the right to claim a child or children as exemptions for federal and state income tax purposes Unless the parties otherwise stipulate in writing, the court or administrative agency shall award in any final order the exemption on a case-by-case basis

(2) In awarding the exemption, the court or administrative agency shall consider

(a) as the primary factor, the relative contribution of each parent to the cost of raising the child, and

(b) among other factors, the relative tax benefit to each parent

(3) Notwithstanding Subsection (2), the court or administrative agency may not award any exemption to the noncustodial parent if that parent is not current in his child support obligation, in which case the court or administrative agency may award an exemption to the custodial parent

(4) An exemption may not be awarded to a parent unless the award will result in a tax benefit to that parent 1994

**78-45-8. Continuing jurisdiction.**

The court shall retain jurisdiction to modify or vacate the order of support where justice requires 1957

**78-45-9. Enforcement of right of support.**

(1) (a) The obligee may enforce his right of support against the obligor, and the office may proceed pursuant to this chapter or any other applicable statute, either on behalf of the Department of Human Services or any other department or agency of this state that provides public assis-

tance, as defined by Subsection 62A-11-303(3), to enforce the right to recover public assistance, or on behalf of the obligee, to enforce the obligee's right of support against the obligor.

(b) Whenever any court action is commenced by the office to enforce payment of the obligor's support obligation, it shall be the duty of the attorney general or the county attorney of the county of residence of the obligee to represent the office.

(2) (a) A person may not commence an action, file a pleading, or submit a written stipulation to the court, without complying with Subsection (2)(b), if the purpose or effect of the action, pleading, or stipulation is to:

(i) establish paternity;

(ii) establish or modify a support obligation;

(iii) change the court-ordered manner of payment of support; or

(iv) recover support due or owing.

(b) When taking an action described in Subsection (2)(a), a person must file an affidavit with the court at the time the action is commenced, the pleading is filed, or the stipulation submitted stating whether public assistance has been or is being provided on behalf of a child who is a subject of the action, pleading, or stipulation. If public assistance has been or is being provided, the person shall mail a copy of the affidavit and a copy of the pleading or stipulation to the office.

(c) If public assistance has been or is being provided, that person shall join the office as a party to the action or mail or deliver a written request to the office asking it to join as a party to the action. A copy of that request, along with proof of service, shall be filed with the court. The office shall be represented as provided in Subsection (1)(b).

(3) Neither the attorney general nor the county attorney represents or has an attorney-client relationship with the obligee or the obligor in carrying out the duties arising under this chapter. 1994

**78-45-9.1. Repealed.** 1984

**78-45-9.2. County attorney to assist obligee.**

The county attorney's office shall provide assistance to an obligee desiring to proceed under this act in the following manner:

(1) provide forms, approved by the Judicial Council of Utah, for an order of wage assignment if the obligee is not represented by legal counsel;

(2) the county attorney's office may charge a fee not to exceed $25 for providing assistance to an obligee under Subsection (1).

(3) inform the obligee of the right to file impecuniously if the obligee is unable to bear the expenses of the action and assist the obligee with such filing;

(4) advise the obligee of the available methods for service of process; and

(5) assist the obligee in expeditiously scheduling a hearing before the court. 1983

**78-45-10. Appeals.**

Appeals may be taken from orders and judgments under this act as in other civil actions. 1957

**78-45-11. Husband and wife privileged communication inapplicable — Competency of spouses.**

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable under this act. Spouses are competent witnesses to testify to any relevant matter, including marriage and parentage. 1957

**78-45-12. Rights are in addition to those presently existing.**

The rights herein created are in addition to and not in substitution to any other rights. 1957

**78-45-13. Interpretation and construction.**

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. 1957

## CHAPTER 45a

## UNIFORM ACT ON PATERNITY


Section

78-45a-1. Obligations of the father.
78-45a-2. Determination of paternity — Effect — Enforcement.
78-45a-3. Limitation on recovery from the father.
78-45a-4. Limitations on recovery from father's estate.
78-45a-5. Remedies.
78-45a-6. Time of trial.
78-45a-6.5. Paternity action — Jury trial.
78-45a-7. Authority for genetic testing.
78-45a-8. Selection of experts.
78-45a-9. Compensation of expert witnesses.
78-45a-10. Effect of genetic test results.
78-45a-10.5. Visitation rights of father.
78-45a-11. Judgment.
78-45a-12. Security.
78-45a-13. Settlement agreements.
78-45a-14. Venue.
78-45a-15. Uniformity of interpretation.
78-45a-16. Short title.
78-45a-17. Operation of act.


**78-45a-1. Obligations of the father.**

The father of a child that is or may be born outside of marriage is liable to the same extent as the father of a child born within marriage, whether or not the child is born alive, for the reasonable expense of the mother's pregnancy and confinement and for the education, necessary support, and any funeral expenses for the child. For purposes of child support collection, a child born outside of marriage includes a child born to a married woman by a man other than her husband if that paternity has been established. 1990

**78-45a-2. Determination of paternity — Effect — Enforcement.**

(1) Paternity may be determined upon:

(a) the petition of the mother, child, putative father, or the public authority chargeable by law with the support of the child; or

(b) a voluntary declaration of paternity executed in accordance with Chapter 45e, Voluntary Declaration of Paternity Act.

(2) If paternity has been determined or has been acknowledged according to the laws of this state or any other state, the liabilities of the father may be enforced in the same or other proceedings by:

(a) the mother, child, or the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, necessary support, or funeral expenses; and

(b) other persons including private agencies to the extent that they have furnished the reason-

ADDENDUM E

MEMORANDUM DECISION MCGINTY V. MCGINTY,
(UTAH APPELLATE MARCH 9, 1995, CASE NO. 930569-CA).

IN THE UTAH COURT OF APPEALS

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| | | |
|---|---|---|
| Selva Eugin McGinty,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>Lee McGinty,<br><br>Defendant and Appellee. | ) | MEMORANDUM DECISION<br>(Not For Publication)<br><br>Case No. 930569-CA<br><br>F I L E D<br>(March 9, 1995) |

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Seventh District, Grand County
The Honorable Lyle R. Anderson

Attorneys: James "Tucker" Hansen, American Fork, for Appellant
Joane Pappas White, Price, for Appellee

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Before Judges Davis, Jackson, and Wilkins.

WILKINS, Judge:

We have determined that "[t]he facts and legal arguments are adequately presented in the brief and record and the decisional process would not be significantly aided by oral argument." Utah R. App. P. 29(a)(3).

Appellant Selva McGinty seeks reversal of the trial court's determination that the ranch property acquired by the parties constituted a marital asset, or even if so, that the distribution of the asset should have been other than equal. To do so, appellant challenges the findings of fact entered by the trial court.

Appellant has failed to meet his burden of marshaling the evidence which supports the trial court's findings and then demonstrating that despite such evidence the findings are nevertheless so lacking in support as to be against the clear weight of the evidence and therefore clearly erroneous. Hagan v. Hagan, 810 P.2d 478, 481 (Utah App. 1991). We affirm the trial court's judgment.

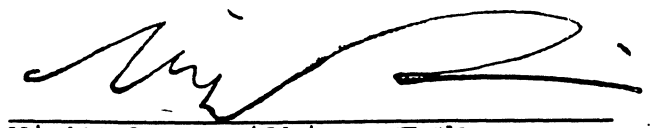
Appellee Lee McGinty seeks an award of attorney fees and costs incurred on appeal under Rule 33 of the Utah Rules of Appellate Procedure. Rule 33(a) provides that if an appeal is

"either frivolous or for delay, [the court] shall award just damages, which may include single or double costs . . . and/or reasonable attorney fees, to the prevailing party. The court may order that the damages be paid by the party or by the party's attorney." A frivolous appeal is one that is "not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law." Utah R. App. P. 33(b). Further, a frivolous appeal "is one in which no justiciable question has been presented and appeal is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed." Schoney v. Memorial Estates, Inc., 863 P.2d 59, 63 (Utah App. 1993). Such is not the case here, "[a]lthough bordering perilously close to being frivolous." Call v. City of West Jordan, 788 P.2d 1049, 1056 (Utah App. 1990).

However, an appeal is for delay when "interposed for any improper purpose such as to . . . gain time that will benefit only the party filing the appeal." Utah R. App. P. 33(b). Appellee has raised such a charge in her brief. In reply, appellant has elected to address only the question of whether or not his appeal is frivolous, and has left unanswered the claim that this appeal is interposed for the improper purpose of gaining time that benefits only himself. When considered in light of the findings of the trial court relating to appellant's intentional violation of the trial court's restraining order regarding the ranch property, and the dealings of appellant with the title to the ranch property, it becomes evident that the appeal here has been brought "for delay." The superficial nature of appellant's initial brief supports this conclusion.

We affirm the judgment of the trial court, and hold that appellee is entitled to attorney fees and double costs incurred on appeal under Rule 33. We remand to the trial court for the sole purpose of determining the amount of attorney fees and double costs incurred by appellee on appeal. We leave to the sound discretion of the trial court the determination of whether the attorney fees and double costs are to be paid by appellant,

appellant's attorney, or both, and if both, then in what proportions.



Michael J. Wilkins, Judge

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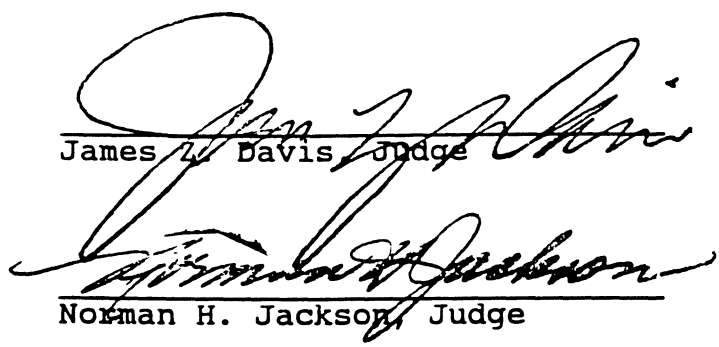
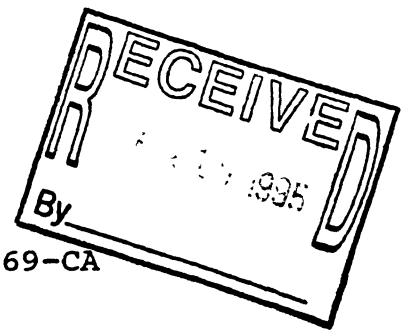
WE CONCUR:



James L. Davis, Judge

Norman H. Jackson, Judge

COVER SHEET




CASE TITLE:

Selva Eugin McGinty,
Plaintiff and Appellant,
v.
Lee McGinty,
Defendant and Appellee.

Case No. 930569-CA

March 9, 1995. MEMORANDUM DECISION (Not For Publication).

Opinion of the Court by MICHAEL J. WILKINS, Judge; JAMES Z. DAVIS, and NORMAN H. JACKSON, Judges, concur.

CERTIFICATE OF MAILING

I hereby certify that on the 9th day of March, 1995, a true and correct copy of the foregoing MEMORANDUM DECISION was deposited in the United States mail to the parties listed below:

James "Tucker" Hansen
Harding & Associates, P.C.
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and a true and correct copy of the foregoing MEMORANDUM DECISION was deposited in the United States mail to the district court judge listed below:

The Honorable Lyle R. Anderson
P.O. Box 68
Monticello, UT 84535

Clerk Courthouse

Judicial Secretary

TRIAL COURT:

Seventh District, Grand County #91-145

ADDENDUM F

APPELLANT'S FINANCIAL DECLARATION
FROM DIVORCE ACTION